Pages 1039–1062

PART II

FEDERAL REGISTER

VOLUME 27 NUMBER 24

Washington, Saturday, February 3, 1962

# Milk Marketing Orders for San Antonio, Texas, Marketing Area, Austin-Waco Marketing Area, and Texas Panhandle Marketing Area

# Title 7—AGRICULTURE

## Chapter X—Agricultural Stabilization and Conservation Service (Marketing Agreements and Orders), Department of Agriculture

[Milk Order 127]

## PART 1127—MILK IN SAN ANTONIO, TEXAS, MARKETING AREA

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### § 1127.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the San Antonio, Texas, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(4) All milk and milk products handled by handlers, as defined in the order as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such amount not to exceed 4 cents per hundredweight as the Secretary may prescribe with respect to skim milk and butterfat (i) received from producers, (ii) received at a pool plant as other source milk and allocated to Class I milk, or (iii) distributed as Class I milk in the marketing area from a nonpool plant during such preceding month.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than February 1, 1962. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of the said order are known to handlers. The recommended decision of the Assistant Secretary of Agriculture was issued December 11, 1961, and the decision containing all amendment provisions of this order, was issued January 9, 1962. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective February 1, 1962, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the FEDERAL REGISTER. (Sec. 4(c), Administrative Procedure Act, 5 U.S.C. 1001–1011.)

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as herein amended; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

*Order relative to handling.* It is therefore ordered, that on and after the effective date hereof, the handling of milk in the San Antonio, Texas, marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as hereby amended, and the aforesaid order is hereby amended to read as follows:

DEFINITIONS

### § 1127.1 Act.

"Act" means Public Act No. 10, 73d Congress, as amended, and as reenacted and amended, by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

**§ 1127.2 Secretary.**

"Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the United States authorized to exercise the powers and to perform the duties of the said Secretary of Agriculture.

**§ 1127.3 Person.**

"Person" means any individual, partnership, corporation, association, or any other business unit.

**§ 1127.4 Cooperative association.**

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines after application by the association (a) to have its entire activities under the control of its members, (b) to have full authority in the sale of milk of its members, and (c) to be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act".

**§ 1127.5 San Antonio, Texas, marketing area.**

"San Antonio, Texas, marketing area" hereinafter called the "marketing area" means all the territory including all municipal corporations and all Federal military reservations, facilities and installations located within the boundaries of Bexar County, Texas.

**§ 1127.6 Distributing plant.**

"Distributing plant" means all the buildings, premises, and facilities of a plant:

(a) Which is approved by an appropriate health authority having jurisdiction in the marketing area or by another health authority whose certification is accepted by such health authority for the processing of Grade A milk or which is acceptable to an agency of the Federal government for distribution of milk to its installations in the marketing area;

(b) In which milk or skim milk is processed or packaged; and

(c) From which Class I milk is disposed of during the month on routes in the marketing area or from which Class I milk is supplied to installations located in the marketing area of an agency of the Federal government.

**§ 1127.7 Supply plant.**

"Supply plant" means all the buildings, premises, and facilities of a plant equipped to either receive or cool milk which is approved by the appropriate health authority to supply fluid milk for distribution as Grade A milk in the marketing area, and from which an amount equal to not less than 50 percent of its receipts from dairy farmers, who would be producers if the plant qualified as a pool plant, are shipped to a distributing plant during the month: *Provided,* That any plant which qualifies as a supply plant for each of the months of July through February shall be considered to be a supply plant for the following months of March through June of such year, except that if the operator of such plant files a written request with the market administrator, supply plant status shall be terminated as of the first of the following month.

**§ 1127.8 Pool plant.**

"Pool plant" means:

(a) A distributing plant (other than one exempt pursuant to § 1127.60) which disposes of as Class I milk on routes in the marketing area 15 percent or more of its receipts of milk during the month from pool plants and from dairy farmers conforming to the requirements set forth in § 1127.11;

(b) A supply plant; and

(c) Any plant approved by an appropriate health authority having jurisdiction in the marketing area to supply milk for distribution as Grade A milk in the marketing area which is operated by a cooperative association, and 50 percent or more of the producer milk of members is received during the month in the pool plants of other handlers, or is transferred to such plants from the plant of the cooperative association.

**§ 1127.9 Nonpool plant.**

"Nonpool plant" means any plant, other than a pool plant, engaged in receiving, manufacturing or distributing milk.

**§ 1127.10 Handler.**

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any person in his capacity as the operator of a nonpool plant from which Class I milk is disposed of on routes in the marketing area;

(c) A cooperative association with respect to the milk of a member producer diverted to a nonpool plant for its account pursuant to § 1127.11 for each day's milk production that such producer's milk is diverted during the month. Milk so diverted shall be deemed to have been received by the association at a pool plant at the location of the pool plant at which the milk was received prior to diversion; and

(d) A cooperative association with respect to the producer milk of its members which is delivered directly from the farm to the pool plant of a handler in a tank truck owned and operated by or under contract to such cooperative association unless the cooperative association notifies the market administrator and the handler to whom the milk is delivered in writing, prior to the first day of the month, that it does not desire to be the handler for such milk. Milk for which the cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by the association at a pool plant at the location of the pool plant to which it is delivered.

**§ 1127.11 Producer.**

"Producer" means any person who produces milk, (a) under a dairy farm permit or rating for the production of milk to be disposed of for consumption as Grade A milk, issued by an appropriate health authority having jurisdiction in the marketing area or by another health authority whose certification is accepted by such health authority, or (b) which is acceptable to an agency of the Federal Government for fluid consumption in its institutions or bases located in the marketing area; which is received directly from the farm at a pool plant or diverted from a pool plant to a nonpool plant for the account of a cooperative association: *Provided,* That if the days of production of such person for which milk is diverted exceeds one-third of the days of production that milk is delivered to a pool plant during the month, such milk shall cease to be producer milk for the entire period of such diversion. This definition shall not include any person with respect to milk produced by him which is received by a handler partially exempt, pursuant to § 1127.60, nor shall it include a dairy farmer during the months of March through June, if milk from the same dairy farmer (or farm) was received at a nonpool plant operated by the same handler, as other than producer milk, on more than half the days of delivery during the preceding months of July through February, except that in the application of this proviso to operations prior to July 1, 1961, the period from the effective date of this amended order through February 1961 shall be substituted for the period of July through February otherwise indicated.

**§ 1127.12 Producer milk.**

"Producer milk" means any skim milk or butterfat contained in milk of a producer received at a pool plant or diverted by a cooperative association in accordance with § 1127.10(c).

**§ 1127.13 Other source milk.**

"Other source milk" means all skim milk and butterfat:

(a) Other than that contained in producer milk or in receipts of fluid milk products from pool plants;

(b) In products designated as Class II milk pursuant to § 1127.41(b) from any source (including those of a plant's own production) which are reprocessed or converted to another product in the plant during the month; and

(c) In any disappearance of non-fluid milk products not otherwise accounted for.

**§ 1127.14 Fluid milk products.**

"Fluid milk products" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, cream or any mixture of cream and milk or skim milk (except eggnog, cultured sour cream, frozen storage cream and bulk ice cream and frozen dairy product mixes).

**§ 1127.15 Route.**

"Route" means any delivery of Class I milk (including any delivery by a vendor or disposition at a plant store) to wholesale or retail outlets, except deliveries in bulk form to other pool plants.

MARKET ADMINISTRATOR

**§ 1127.20 Designation.**

The agency for the administration of this part shall be a market administrator who shall be a person selected by the Secretary. Such person shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of, the Secretary.

### § 1127.21 Powers.

The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

(b) To receive, investigate, and report to the Secretary complaints of violations;

(c) To make rules and regulations to effectuate its terms and provisions; and

(d) To recommend amendments to the Secretary.

### § 1127.22 Duties.

The market administrator shall:

(a) Within 30 days following the date upon which he enters upon his duties, execute and deliver to the Secretary a bond, conditioned upon the faithful performance of his duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;

(c) Obtain a bond in a reasonable amount and with reasonable surety thereon covering each employee who handles funds entrusted to the market administrator;

(d) Pay out of the funds provided by § 1127.88 the cost of his bond and of the bonds of his employees, his own compensation, and all other expenses (except those incurred under § 1127.87) necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided for in this part, and, upon request by the Secretary, surrender the same to such other person as the Secretary may designate;

(f) Submit his books and records to examination by the Secretary and furnish such information and reports as the Secretary may request;

(g) Verify all reports and payments of each handler by audit, or such other means as the market administrator finds necessary, of such handler's records and of the records of any other person upon whose utilization the classification of skim milk or butterfat for such handler depends;

(h) Publicly announce, at his discretion, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, within 10 days after the day upon which he is required to perform such acts has not:

(1) Made reports pursuant to §§ 1127.30 to 1127.31, or

(2) Made payments pursuant to § 1127.61 and §§ 1127.80 to 1127.88.

(i) On or before the twelfth day after the end of each month, report to each cooperative association which so requests the amount and class utilization of milk received by each handler from producers who are members of such cooperative association. For the purpose of this report the milk so received shall be assigned to each class in the proportion that the total producer milk in each class is to the total receipts of producer milk by such handler;

(j) Notify handlers and make announcement by such other means as he deems appropriate of prices as follows:

(1) On or before the tenth day of each month the Class I price for such month computed pursuant to § 1127.51 and the Class I butterfat differential computed pursuant to § 1127.53;

(2) On or before the fifth day of each month the prices of Class II and Class II–A milk for the preceding month computed pursuant to § 1127.52 and the butterfat differential for Class II and Class II–A milk computed pursuant to § 1127.53; and

(3) On or before the twelfth day of each month for the preceding month the uniform price computed pursuant to § 1127.71, and the butterfat differential to producers computed pursuant to § 1127.81.

(k) Prepare and publish such statistics and information as he deems advisable and as do not reveal confidential information.

## Reports, Records, and Facilities

### § 1127.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month, each handler shall report to the market administrator in the detail and on forms prescribed by the market administrator for each of his pool plants as follows:

(a) The quantities of skim milk and butterfat contained in producer milk;

(b) The quantities of skim milk and butterfat contained in (or represented by) receipts from pool plants;

(c) The quantities of skim milk and butterfat contained in receipts of other source milk;

(d) The quantities of skim milk and butterfat contained in receipts of Class II and Class II–A products disposed of in the form in which received without further processing or packaging by the handler;

(e) The utilization of all skim milk and butterfat required to be reported pursuant to this section; and

(f) Such other information with respect to the receipt and utilization of skim milk and butterfat as the market administrator may prescribe.

### § 1127.31 Reports of payments to producers.

On or before the 20th day after the end of each month, each handler who received milk from producers shall submit to the market administrator his producer payroll for the month, which shall show for each producer:

(a) His total deliveries of milk;

(b) The average butterfat content of such milk; and

(c) The net amount of such handler's payments to such producer with the prices, deductions, and charges involved.

### § 1127.32 Records and facilities.

Each handler shall maintain and make available to the market administrator or to his representative during the usual hours of business such accounts and records of his operations and such facilities as are necessary for the market administrator to verify or establish the correct data with respect to:

(a) The receipts and utilization of all skim milk and butterfat received from any source;

(b) The weights and tests for butterfat and other content of all milk, skim milk, cream and other milk products handled;

(c) Payments to producers and cooperative associations; and

(d) The pounds of skim milk and butterfat contained in or represented by all milk, skim milk, cream and other milk products on hand at the beginning and end of each month.

### § 1127.33 Retention of records.

All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the month to which such books and records pertain: *Provided,* That if, within such three-year period, the market administrator notifies the handler in writing that the retention of such books and records, or of specified books and records, is necessary in connection with a proceeding under section 8c(15)(A) of the Act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case, the market administrator shall give further written notification to the handler promptly, upon the termination of the litigation or when the records are no longer necessary in connection therewith.

## Classification

### § 1127.40 Skim milk and butterfat to be classified.

All skim milk and butterfat received within the month at a pool plant in the form of producer milk, other source milk, or receipts from other pool plants shall be classified by the market administrator pursuant to the provisions of §§ 1127.41 to 1127.46.

### § 1127.41 Classes of utilization.

Subject to the conditions set forth in §§ 1127.43 and 1127.44, the classes of utilization shall be as follows:

(a) Class I milk shall be all skim milk (including reconstituted skim milk) and butterfat:

(1) Disposed of in the form of fluid milk products: *Provided, however,* That when any such product is fortified with nonfat milk solids the amount of skim milk to be classified as Class I shall be only that amount equal to the weight of skim milk in an equal volume of unfortified product of the same nature and butterfat content;

(2) Contained in inventories of fluid milk products on hand at the end of the month; and

(3) All other skim milk and butterfat not specifically accounted for as Class II milk or Class II–A milk;

(b) Class II milk shall be all skim milk and butterfat:

(1) Used to produce any product other than those designated as Class I in paragraph (a) of this section or as Class II–A in paragraph (c) of this section;

(2) Disposed of for livestock feed;

(3) In shrinkage allocated to (i) receipts of other source milk in the form of fluid milk products, (ii) receipts of producer milk in an amount not to exceed one-half of one percent of the total receipts of skim milk and butterfat received from producers at the pool plant, plus one and one-half percent of the total pounds of skim milk and butterfat in milk received at a pool plant from producers and in bulk as milk in fluid form from other pool plants (including milk received from a cooperative association in its capacity as a handler pursuant to § 1127.10(d)) and which are not disposed of in bulk as milk in fluid form to another pool plant;

(4) Skim milk contained in any fortified product designated in subparagraph (a)(1) of this section in excess of the pounds of skim milk in such product classified as Class I pursuant to such subparagraph; and

(c) Class II–A milk shall be all skim milk and butterfat used to produce Cheddar cheese.

**§ 1127.42 Shrinkage.**

The market administrator shall allocate shrinkage to a handler's receipts at pool plants as follows:

(a) Compute the total shrinkage of skim milk and butterfat; and

(b) Prorate the resulting amounts between the receipts of skim milk and butterfat in milk of producers and other source milk received in the form of fluid milk products.

**§ 1127.43 Responsibility of handlers and reclassification of milk.**

(a) All skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk or butterfat can prove to the market administrator that such skim milk or butterfat should be classified otherwise.

(b) Any skim milk or butterfat classified as Class II or Class II–A shall be reclassified if such skim milk or butterfat is later disposed of (whether in original or other form) in another classification.

**§ 1127.44 Transfers.**

Skim milk or butterfat transferred or diverted from a pool plant in the form of milk, skim milk, or cream shall be classified:

(a) As Class I milk, if transferred to the pool plant of another handler, unless utilization as Class II or Class II–A milk is mutually reported in writing to the market administrator by both handlers on or before the 7th day after the end of the month within which such transfer occurred, and the amount of skim milk or butterfat so assigned to Class II or Class II–A does not exceed the amount of skim milk or butterfat, respectively, remaining in Class II or Class II–A utilization by the transferee-handler after the subtraction of other source milk pursuant to § 1127.46: *Provided,* That the skim milk and butterfat so transferred shall be classified so as to result in a maximum assignment of producer milk first to Class I milk and secondly to Class II milk. In no case shall the assignment to Class I milk in the transferee plant be greater than the difference between its total receipts of milk and its total utilization of such milk in Class II and Class II–A.

(b) As Class I milk, if transferred or diverted to a nonpool plant except as:

(1) The transferring or diverting handler claims utilization as Class II milk or Class II–A milk;

(2) The operator of the nonpool plant maintains books and records showing the receipts and utilization of all skim milk and butterfat at such plant which are made available if requested by the market administrator for the purpose of verification, in which case skim milk and butterfat so transferred or diverted shall be allocated to the highest use classification remaining after subtracting in series beginning with the highest use classification, the skim milk and butterfat in milk received at the nonpool plant directly from dairy farmers who the market administrator determines constitute its regular source of supply for Class I milk.

(c) As Class II milk if transferred subject to verification by the market administrator to a wholesale food manufacturing establishment which has no Class I disposition of skim milk or butterfat.

**§ 1127.45 Computation of skim milk and butterfat in each class.**

For each month, the market administrator shall correct for mathematical and for other obvious errors the report submitted by each handler and shall compute the pounds of skim milk and butterfat in each class of milk for such handler. Skim milk contained in any product utilized, produced, or disposed of by the handler during the month shall be considered to be an amount equivalent to the nonfat milk solids contained in such products, plus all of the water originally associated with such solids.

**§ 1127.46 Allocation of skim milk and butterfat classified.**

(a) The pounds of skim milk remaining in each class after making the following computations for each handler for each month shall be the pounds of skim milk in such class allocated to producer milk received by such handler during such month.

(1) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in fluid milk products which were on hand at the beginning of the month;

(2) Subtract from the pounds of skim milk in each class the pounds of skim milk received from other pool plants in a form other than milk, skim milk, or cream according to its classification pursuant to § 1127.41;

(3) Subtract from the pounds of skim milk remaining in Class II milk the plant shrinkage of skim milk in producer milk classified as Class II milk pursuant to § 1127.41(b)(3)(ii);

(4) Subtract from the pounds of skim milk in Class I milk the pounds of skim milk received from a nonpool plant in the form of packaged fluid milk products which are not in excess of the pounds of skim milk transferred to such plant from the pool plant of the handler in fluid form and classified as Class I milk;

(5) Subtract from the pounds of skim milk remaining in each class beginning with the lowest priced class the pounds of skim milk in other source milk which were received in the form of nonfluid milk products other than condensed skim milk or nonfat dry milk;

(6) Subtract from the pounds of skim milk remaining in each class beginning with the lowest priced class the pounds of skim milk in other source milk received in the form of condensed skim milk or nonfat dry milk;

(7) Subtract from the pounds of skim milk remaining in each class beginning with the lowest priced class the pounds of skim milk in other source milk received in the form of fluid milk products which were not subject to the Class I pricing and payment provisions of another order issued pursuant to the Act and on which a compensatory payment has not been paid under the order;

(8) Subtract from the pounds of skim milk remaining in each class beginning with the lowest priced class the pounds of skim milk in other source milk received in the form of fluid milk products which were subject to the Class I pricing and payment provisions of another order issued pursuant to the Act or on which a compensatory payment had been paid under another order;

(9) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received from other pool plants according to the class to which they were assigned pursuant to § 1127.44(a);

(10) Add to the pounds of skim milk remaining in Class II milk the pounds of skim milk subtracted pursuant to subparagraph (3) of this paragraph and if the pounds of skim milk remaining in all classes exceed the pounds of skim milk received from producers, subtract such excess from the pounds of skim milk remaining in the various classes in series beginning with the lowest priced class.

(b) Determine the pounds of butterfat in each class to be allocated to producer milk in the same manner prescribed for skim milk in paragraph (a) of this section.

(c) Determine the weighted average butterfat content of Class I, Class II, and Class II–A milk computed pursuant to paragraphs (a) and (b) of this section.

MINIMUM PRICES

**§ 1127.50 Minimum prices.**

Subject to the appropriate differentials computed pursuant to §§ 1127.53 and 1127.54 each handler shall pay in the manner set forth in §§ 1127.70 to 1127.86 for milk received at his pool plant from producers at not less than the prices per hundredweight set forth in §§ 1127.51 and 1127.52.

**§ 1127.51 Class I milk.**

The Class I milk price shall be the price for Class I milk established under Federal Order No. 126 regulating the handling of milk in the North Texas marketing area plus 42 cents.

**§ 1127.52 Class II and Class II–A milk.**

(a) *Class II milk.* During April, May, and June, the price per hundredweight for Class II milk shall be the price computed pursuant to subparagraph (1) of this paragraph, less 14 cents or the price computed pursuant to paragraph (b) of this section, whichever is higher. During all other months, the Class II price shall be the price computed pursuant to subparagraph (1) of this paragraph or paragraph (b) of this section, whichever is higher.

(1) The sum of the amounts computed pursuant to subdivisions (i) and (ii) of this subparagraph, rounded to the nearest cent:

(i) Multiply by 4.4, the simple average as computed by the market administrator of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago as reported by the United States Department of Agriculture during the month;

(ii) From the average of the carlot prices per pound of nonfat dry milk for human consumption, spray process, f.o.b. manufacturing plants in the Chicago area as reported by the United States Department of Agriculture for the period from the 26th day of the preceding month through the 25th day of the current month, subtract 5 cents and multiply by 8.16.

(b) *Class II–A milk.* The minimum price per hundredweight to be paid by each handler for milk received at his plant from producers and classified as Class II–A milk shall be computed by multiplying by 8.4 the average of the daily prices paid per pound of cheese at Wisconsin Primary markets ("Cheddars" f.o.b. Wisconsin assembling points, cars or truckloads) as reported by the Department for the month involved and rounding to the nearest cent.

**§ 1127.53 Butterfat differentials to handlers.**

If the average butterfat content of the milk of any handler allocated to any class pursuant to § 1127.46 is more or less than 4.0 percent, there shall be added to the respective class price, computed pursuant to §§ 1127.51 and 1127.52 for each one-tenth of 1 percent, that the average butterfat content of such milk is above 4.0 percent, or subtracted for each one-tenth of 1 percent that such average butterfat content is below 4.0 percent, an amount equal to the butterfat differential computed by multiplying the simple average, as computed by the market administrator, of the daily wholesale prices per pound (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter at Chicago as reported by the United States Department of Agriculture during the appropriate month by the applicable factor listed below:

(a) *Class I milk.* Multiply such price for the preceding month by 0.125;

(b) *Class II and Class II–A milk.* Multiply such price for the current month by 0.108.

**§ 1127.54 Location adjustment credit to handlers.**

For milk which is received from producers at a pool plant located more than 50 miles from the City Hall, in San Antonio, Texas, by the shortest hard-surfaced highway distance as determined by the market administrator and which is classified as Class I milk, the price specified in § 1127.51 shall be reduced 1.5 cents per hundredweight for each 10 miles or fraction thereof that such plant is distant from the City Hall in San Antonio, Texas: *Provided*, That in calculating such adjustments, transfers to a pool plant at which a location adjustment is not applicable or at which it is less than at the transferor plant may be assigned to Class I only to the extent that Class I disposition at the transferee plant exceeds 95 percent of the receipts from producers and a cooperative association(s) in its capacity as a handler pursuant to § 1127.10(d) at such plant. Such assignment to transferor plants shall be made first to plants at which no location adjustment credit is applicable and then in sequence to plants at which the lowest rate of such adjustment credit would apply.

**§ 1127.55 Use of equivalent prices.**

If for any reason the price quotation required by this part for computing class prices or for any other purpose is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

APPLICATIONS OF PROVISIONS

**§ 1127.60 Handlers subject to other Federal orders.**

The provisions of this part shall not apply with respect to the operation of any plant specified in paragraph (a) or (b) of this section except that the operator thereof shall, with respect to total receipts of skim milk and butterfat at such plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator, and, in the event he has disposed of on routes in the marketing area Class I milk which was neither classified nor priced under such other order or on which a compensatory payment was not made under any other order, shall pay to the market administrator on or before the 13th day of each month an amount computed by multiplying the total volume of such Class I milk disposed of on routes in the marketing area from such plant during the preceding month by the rate of compensatory payment computed pursuant to § 1127.65.

(a) A plant meeting the requirements for pooling pursuant to § 1127.8(a) which also meets the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk is disposed of during the month on routes in such other Federal order marketing area than was disposed of on routes in this marketing area, except that if such plant was subject to all of the provisions of this part in the immediately preceding month, it shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its Class I route disposition is made in such other marketing area unless notwithstanding the provisions of this paragraph it is fully regulated under such other order.

(b) A plant meeting the requirements for pooling pursuant to § 1127.8(a) which also meets the pooling requirements of another Federal order on the basis of route distribution in such other marketing area and from which, the Secretary determines, a greater quantity of Class I milk is disposed of during the month on routes in this marketing area than is so disposed of in such other marketing area, but which plant is fully regulated under such other Federal order.

**§ 1127.61 Handlers operating nonpool plants.**

Each handler who is the operator of a nonpool plant whose milk is not subject to the classification and Class I pricing provisions of another order issued pursuant to the Act shall report, as required pursuant to § 1127.30, reporting receipts from dairy farmers in lieu of such information with respect to producers, shall allow verification of such reports, and on or before the 13th day of each month he shall pay to the market administrator an amount computed by multiplying the total volume of Class I milk disposed of on routes in the marketing area from such nonpool plant during the preceding month by the rate of compensatory payments computed pursuant to § 1127.65.

UNPRICED MILK

**§ 1127.65 Rate of payment on unpriced milk.**

The rate of payment per hundredweight applicable to other source milk which has not been subject to the classification and Class I pricing provisions of another order issued pursuant to the Act or on which a compensatory payment has not been made pursuant to another order and which is assigned to Class I use at pool plants or which is disposed of as Class I milk on routes in the marketing area from nonpool plants shall be calculated as follows:

(a) For the months of February through July, subtract the Class II prices adjusted by the Class II butterfat differential, from the Class I price, adjusted by the Class I butterfat differential; and, except in the case of condensed skim milk and nonfat dry milk, by the location adjustment pursuant to § 1127.54 which would be applicable if the nonpool plant were a pool plant; and

(b) During the months of January and August, subtract from the Class I price, adjusted by the Class I butterfat differential, the uniform price to producers, adjusted by the Class I butterfat differential.

DETERMINATION OF UNIFORM PRICES TO PRODUCERS

**§ 1127.70 Computation of value of milk for each handler.**

For each month the market administrator shall compute the value of milk for each handler as follows:

(a) *Handlers who receive milk from producers:*

(1) Multiply the quantity of producer milk in each class computed pursuant to § 1127.46 by the applicable class price;

(2) If any overage has been deducted pursuant to § 1127.46 (a) and (b), multiply such amount by the applicable class price;

(3) For the months of January through August, multiply the hundredweight of other source skim milk and butterfat subtracted from Class I milk pursuant to § 1127.46(a) (5) through (7) and (b) by the applicable rate determined pursuant to § 1127.65; and

(4) Add together the resulting amounts in (1) through (3) of this paragraph.

(b) *Handlers who operate pool plants but who receive no milk from producers:*

(1) If any overage has been deducted pursuant to § 1127.46 (a) and (b), multiply such amount by the applicable class price;

(2) For the months of January through August, multiply the hundredweight of other source skim milk and butterfat subtracted from Class I milk pursuant to § 1127.46(a) (5) through (7) and (b) by the applicable rate determined pursuant to § 1127.65; and

(3) Add the resulting amounts in (1) and (2) of this paragraph.

**§ 1127.71 Computation of uniform price for pool milk.**

For each month the market administrator shall compute the uniform price for all milk received from producers as follows:

(a) Combine into one total the amounts computed pursuant to § 1127.70 (a) and (b) for all handlers who made the reports prescribed in § 1127.30 and who are not in default of payments required pursuant to §§ 1127.80 and 1127.84;

(b) Add an amount representing not less than one-half of the unobligated cash balance in the producer-settlement fund account pursuant to § 1127.83;

(c) Add the total value of the location adjustments to producers computed pursuant to § 1127.82;

(d) Subtract if the average butterfat content of the producer milk of handlers included in the computations pursuant to paragraph (a) of this section is greater than 4.0 percent, or add if such average is less than 4 percent, an amount computed by multiplying the amount by which such average butterfat content varies from 4.0 percent by the butterfat differential computed pursuant to § 1127.81 and multiply the resulting amount by the hundredweight of such milk;

(e) Divide by the total hundredweight of producer milk of handlers included in the computation pursuant to paragraph (a) of this section;

(f) Subtract not less than 4 cents nor more than 5 cents. The resulting figure shall be the uniform price per hundredweight for all milk of 4.0 percent butterfat content received from producers.

PAYMENT FOR MILK

**§ 1127.80 Time and method of payment.**

(a) Each handler shall pay to a cooperative association on or before the 13th day of the month, for milk received from it during the preceding month for which such association is a handler pursuant to § 1127.10(d), the value of such milk at not less than the applicable class prices: *Provided, however,* That for each hundredweight of milk so received during the first 15 days of any month, such handler shall, upon written request of the cooperative association make an advance payment to such association by the 26th day of the month at not less than the Class II price of the preceding month, in which case the obligation of the handler otherwise payable on or before the 13th day of the following month shall be reduced by the amount of such advance payment.

(b) Except as provided in paragraph (3) of this section, each handler shall make payment to each producer for milk received from such producer as follows:

(1) On or before the last day of each month, for milk received during the first 15 days of such month at not less than the price per hundredweight for Class II milk for the preceding month;

(2) On or before the 15th day after the end of the month during which the milk was received at not less than the uniform price per hundredweight computed for such month pursuant to § 1127.71 subject to the following adjustments: (i) the butterfat differential pursuant to § 1127.81, (ii) the location adjustment pursuant to § 1127.82, (iii) the payment made pursuant to subparagraph (1) of this section, (iv) marketing service deductions pursuant to § 1127.87, and (v) proper deductions authorized by such producer: *Provided,* That if by such date such handler has not received full payment pursuant to § 1127.85, he may reduce his total payment to all producers pro rata by not more than the amount of reduction in payments from the market administrator; he shall, however, complete such payments pursuant to this subparagraph not later than the date for making such payments next following receipt of the balance due from the market administrator;

(3) (i) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association, each handler shall on or before the 20th day of each month furnish the cooperative association information showing the daily and total pounds of milk received from each of the association's member producers for the first 15 days of such month and, on or before the 10th day after the end of each month, such information for the 16th through the end of such month, and shall pay to such association on or before the 26th and 13th day of each month, in lieu of payments pursuant to subparagraphs (1) and (2) respectively, of this paragraph an amount equal to the sum of the individual payments otherwise payable to such producers. The foregoing payment shall be made with respect to milk of each producer whom the cooperative association certifies is a member effective on and after the first day next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association.

(ii) A copy of each such request, promise to reimburse and certified list of members shall be filed simultaneously with the market administrator by the cooperative association and shall be subject to verification at his discretion, through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

(4) In making the payments to producers pursuant to subparagraphs (2) and (3) of this paragraph, each handler shall furnish each producer or cooperative association from whom he has received milk with a supporting statement which shall show:

(i) The month for which payment is made and the identity of the handler and of the producer;

(ii) The total pounds and average butterfat test of milk received from such producer;

(iii) The minimum rate or rates at which payment to such producer is required;

(iv) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;

(v) The amount or rate per hundredweight of each deduction claimed by the handler; together with a description of the respective deductions; and

(vi) The net amount of payment to such producer.

**§ 1127.81 Producer butterfat differential.**

In making payments pursuant to § 1127.80 there shall be added to the uniform price for each one-tenth of one percent that the average butterfat content of such milk is above 4.0 percent not less than, or there may be deducted from the uniform price for each one-tenth of one percent that the average butterfat content of such milk is below 4.0 percent not more than an amount computed as follows: Multiply by 1.1 the simple average computed by the market administrator of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago as reported by the

United States Department of Agriculture during the month, divide the result by 10 and round to the nearest one-tenth of a cent.

**§1127.82 Location adjustment to producers.**

In making payments to producers pursuant to § 1127.80 for that milk which is received from producers at a pool plant located more than 50 miles from the City Hall in San Antonio, Texas, by the shortest hard-surfaced highway distance as determined by the market administrator, the handler may deduct an amount equal to not more than 1.5 cents per hundredweight for each 10 miles or fraction thereof that such plant is distant from the City Hall in San Antonio, Texas.

**§ 1127.83 Producer-settlement fund.**

The market administrator shall establish a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers, pursuant to §§ 1127.60, 1127.61, 1127.84, and 1127.86 and out of which he shall make all payments, pursuant to §§ 1127.85 and 1127.86.

**§ 1127.84 Payments to the producer-settlement fund.**

On or before the 13th day after the end of each month each handler, including a cooperative association which is a handler, shall pay to the market administrator the amount by which the value of milk for such handler pursuant to § 1127.70, for such month exceeds the obligation pursuant to § 1127.80(b) of such handler to producers for milk received during the month.

**§ 1127.85 Payments out of the producer-settlement fund.**

On or before the 14th day after the end of the month during which the milk was received, the market administrator shall pay to each handler, including a cooperative association which is a handler, the amount, if any, by which the value of the milk received by such handler from producers during the month as determined pursuant to § 1127.70 is less than the value of such milk calculated at the uniform price adjusted by the producer butterfat differential and the location adjustment to producers.

**§ 1127.86 Adjustment of accounts.**

Whenever audit by the market administrator of any handler's books, reports, records, or accounts discloses errors resulting in money due:

(a) The market administrator from such handler;

(b) Such handler from the market administrator; or

(c) Any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payment set forth in the provisions under which such error occurred.

**§ 1127.87 Marketing service.**

(a) *Marketing service deduction.* Except as set forth in paragraph (b) of this section each handler, in making payments to producers (other than himself) shall make a deduction of six cents per hundredweight of milk or such lesser deduction as the Secretary from time to time may prescribe. Such deductions shall be paid by the handler to the market administrator on or before the 15th day after the end of the month. Such moneys shall be expended by the market administrator for verification of weights and tests of milk received from such producers and in providing market information to such producers.

(b) *Marketing service deduction with respect to producers who are members of or are marketing through a cooperative association.* In the case of each producer who is a member of, or who has given written authorization for the rendering of marketing services and the taking of a deduction therefor to a cooperative association, which the Secretary has determined is performing the services described in paragraph (a) of this section, such handler, in lieu of the deduction specified under paragraph (a) of this section, shall deduct from the payments to such producer the amount per hundredweight specified by such association which is not in excess of the rate authorized by such producer and shall pay such deduction to the cooperative association entitled to receive it on or before the 15th day after the end of the month during which such milk was received.

**§ 1127.88 Payment of administration expense.**

As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may from time to time prescribe, with respect to skim milk and butterfat (a) received from producers, (b) received at a pool plant as other source milk and allocated to Class I milk, or (c) distributed as Class I milk in the marketing area from a nonpool plant during such preceding month.

**§ 1127.89 Termination of obligation.**

The provisions of this section shall apply to any obligation under this part for the payment of money.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to the following information:

(1) The amount of the obligation;

(2) The delivery period during which the milk, with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the calendar month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representatives.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the calendar month during which the agreement (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

**§ 1127.90 Effective time.**

The provisions of this part or any amendment to this part shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated pursuant to § 1127.91.

**§ 1127.91 Suspension or termination.**

The Secretary may suspend or terminate this part or any provision of this part whenever he finds this part or any provision of this part obstructs or does not tend to effectuate the declared policy of the Act. This part shall terminate in any event whenever the provisions of the Act authorizing it cease to be in effect.

**§ 1127.92 Continuing obligations.**

If, upon the suspension or termination of any or all provisions of this part there

are any obligations thereunder the final accrual or ascertainment of which requires further acts by any person (including the market administrator), such further acts shall be performed notwithstanding such suspension or termination.

**§ 1127.93 Liquidation.**

Upon the suspension or termination of the provisions of this part, except this section, the market administrator, or such other liquidating agent as the Secretary may designate, shall if so directed by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable, and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition. If a liquidating agent is so designated, all assets, books and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidation and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

**§ 1127.100 Agents.**

The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this part.

**§ 1127.101 Separability of provisions.**

If any provision of this part or its application to any person or circumstances is held invalid, the application of such provision, and the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

Effective date: February 1, 1962.

Signed at Washington, D.C., on January 30, 1962.

CHARLES S. MURPHY,
*Under Secretary.*

[F.R. Doc. 62-1150; Filed, Feb. 2, 1962; 8:46 a.m.]

[Milk Order 129]

# PART 1129—MILK IN AUSTIN-WACO MARKETING AREA

## Order Amending Order


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AUTHORITY: §§ 1129.0 to 1129.111 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

**§ 1129.0 Findings and determinations.**

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Austin-Waco marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in, the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in this order, are in the current of interstate commerce or directly burden, obstruct or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler as his pro rata share of such expense, 5 cents per hundredweight, or such amount not exceeding 5 cents per hundredweight, as the Secretary may prescribe with respect to all (a) receipts of producer milk including such handler's own production, (b) other source milk at a fluid milk plant which is classified as Class I milk and, (c) Class I milk disposed of during the month on routes (including routes operated by vendors) to retail or wholesale outlets (except fluid milk plant) located in the marketing area from a nonfluid milk plant.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than February 1, 1962. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of the said order are known to handlers. The recommended decision of the Assistant Secretary of Agriculture was issued December 11, 1961, and the decision containing all amendment provisions of this order, was issued January 9, 1962. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective February 1, 1962, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the FEDERAL REGISTER. (Sec. 4(c) Administrative Procedure Act, 5 U.S.C. 1001–1011.)

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as herein amended; and

(3) The issuance of the order amending the order is approved or favored by at least three-fourths of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

*Order relative to handling.* It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Austin-Waco marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as hereby amended, and the aforesaid order is hereby amended as follows:

DEFINITIONS

**§ 1129.1 Act.**

"Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

**§ 1129.2 Secretary.**

"Secretary" means the Secretary of Agriculture or such other officer or employee of the United States as is authorized to exercise the powers or to perform the duties of the said Secretary of Agriculture.

**§ 1129.3 Department.**

"Department" means the United States Department of Agriculture or such other Federal agency as is authorized to perform the price reporting functions specified in this part.

**§ 1129.4 Person.**

"Person" means any individual, partnership, corporation, association, or any other business unit.

**§ 1129.5 Cooperative association.**

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the act of Congress of February 10, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales or marketing milk or its products for its members.

**§ 1129.6 Austin-Waco marketing area.**

"Austin-Waco Marketing Area" hereinafter called the marketing area means all territory, including all municipal corporations and all Federal military reservations, facilities and installations, located within or partially within the boundaries of Travis, Hays, Lampasas, Burnet, Caldwell, Bastrop, Williamson, Bell, Falls, McLennan, Coryell, Comal and Guadalupe Counties, all in the State of Texas.

**§ 1129.7 Zone I.**

"Zone I" means all territory south of the northern boundaries of Guadalupe, Comal, Kendall, Kerr, Edwards and Val Verde Counties, all in the State of Texas and all territory south of a boundary formed by United States Highway 90 east of the marketing area to the Colorado River and thence south along the Colorado River.

**§ 1129.8 Distributing plant.**

"Distributing plant" means any milk processing or packaging plant from which Class I milk equal to more than an average of 500 pounds per day or 5 percent, whichever is less, of the Grade "A" milk and skim milk received from dairy farmers or other plants, is disposed of during the month on a route(s) operated partially or wholly in the marketing area.

**§ 1129.9 Supply plant.**

"Supply plant" means any plant from which fluid milk, fluid skim milk or cream is received at a distributing plant:

(a) For any of the months of February through July, on four or more days during the month, or in an amount equal to a daily average of not less than 3,300 pounds for such month; and

(b) For any of the months of August through January:

(1) On ten or more days during the month, or in an amount equal to a daily average of not less than 8,300 pounds for such month; or

(2) On four or more days during the month, or in an amount equal to a daily average of not less than 3,300 pounds for such month, and such plant was a supply plant pursuant to (a) during any month of the immediately preceding period of February through July.

**§ 1129.10 Fluid milk plant.**

"Fluid milk plant" means (a) a distributing plant or a supply plant, and (b) any plant approved by the appropriate health authority to supply milk for distribution as Grade A milk in the marketing area if such plant is operated by a cooperative association, and 75 percent or more of the milk of the members of such association, including receipts pursuant to § 1129.13(b), is received at the fluid milk plants of other handlers.

**§ 1129.11 Nonfluid milk plant.**

"Nonfluid milk plant" means any milk manufacturing, processing, or bottling plant other than a fluid milk plant.

**§ 1129.12 Approved plant.**

"Approved plant" means: (a) A fluid milk plant, (b) any milk plant from which Class I milk is disposed of on a route in the marketing area.

**§ 1129.13 Handler.**

"Handler" means (a) any person in his capacity as the operator of one or more approved plants, and (b) a cooperative association with respect to the milk of any producer (1) which it diverts to a nonfluid milk plant, or (2) which it causes to be delivered directly from the farm, in bulk tank pickup truck(s) owned and/or controlled by such association, to the fluid milk plant of an-

other handler: *Provided,* That such milk shall be deemed to have been received by the cooperative association at the location of the fluid milk plant to which it is delivered, except that such milk shall be considered as a receipt of producer milk by the operator of such fluid milk plant for the purpose of §§ 1129.41(b)(4), 1129.42, 1129.46(a)(1) and 1129.95.

**§ 1129.14 Route.**

"Route" means the delivery (including delivery by a vendor or sale at a plant store) of milk, skim milk, buttermilk, cream or flavored milk drinks other than as follows:

(a) Delivery in bulk to a milk plant, or

(b) Delivery in consumer packages from a milk processing plant to a distributing plant in an amount not in excess of the amount of producer milk received by such processing plant during the month from the operator of such distributing plant and classified as Class I milk: *Provided,* That for the purposes of this paragraph milk so transferred to such processing plant shall be considered to be producer milk to the extent that total receipts during the month of producer milk by the operator of such distributing plant exceed his gross Class I sales less: (1) Receipts of Class I milk from other fluid milk plants; (2) milk transferred as Class I milk to such milk processing plant; and (3) milk received in consumer packages from such milk processing plant.

**§ 1129.15 Producer.**

"Producer" means any person, except a producer-handler, who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority, which milk is (a) received at a fluid milk plant or

(b) Diverted for his account by the operator of a fluid milk plant or cooperative association from such plant to a nonfluid milk plant during the period January through July and on not more than one-third of the days of delivery during the month for the period August through December: *Provided,* That milk so diverted shall be deemed to have been received by the diverting handler at the plant from which it was diverted.

**§ 1129.16 Producer milk.**

"Producer milk" means all skim milk and butterfat contained in milk produced by a producer and received at a fluid milk plant directly from producers or diverted from such a plant pursuant to § 1129.15.

**§ 1129.17 Other source milk.**

"Other source milk" means all skim milk and butterfat contained in:

(a) Receipts during the month in the form of products designated as Class I milk pursuant to § 1129.41(a)(1), except (1) such products received from other fluid milk plants, or (2) producer milk; and

(b) Products designated as Class II milk pursuant to § 1129.41(b)(1) from any source (including those produced at the plant) which are reprocessed or converted into another product during the month.

**§ 1129.18 Producer-handler.**

"Producer-handler" means a person who operates both a dairy farm(s) and a milk processing or bottling plant at which milk is received from the dairy farm(s) of such person but from no other dairy farm: *Provided,* That such person shall furnish to the market administrator for his verification, subject to review by the Secretary, evidence that the maintenance, care and management of the dairy animals and other resources necessary for the production of milk in his name are and continue to be the personal enterprise of and at the personal risk of such producer and the processing, packaging and distribution of the milk are and continue to be the personal enterprise of and at the personal risk of such producer in his capacity as a handler.

**§ 1129.19 Chicago butter price.**

"Chicago butter price" means the simple average, as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any price range as one price) per pound of 92-score bulk creamery butter at Chicago as reported during the month by the Department.

MARKET ADMINISTRATOR

**§ 1129.20 Designation.**

The agency for the administration of this part shall be a market administrator, selected by the Secretary, who shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of, the Secretary.

**§ 1129.21 Powers.**

The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

(b) To receive, investigate, and report to the Secretary complaints of violations;

(c) To make rules and regulations to effectuate its terms and provisions; and

(d) To recommend amendments to the Secretary.

**§ 1129.22 Duties.**

The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including but not limited to the following:

(a) Within 45 days following the date on which he enters upon his duties or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon such duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;

(c) Obtain a bond in a reasonable amount and with reasonable surety thereon covering each employee who handles funds entrusted to the market administrator;

(d) Pay out of the funds provided by § 1129.95 the cost of his bond and of the bonds of his employees, his own compensation, and all other expenses (except those incurred under § 1129.94) necessarily incurred by him in maintenance and functioning of his office and in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided for in this part, and, upon request by the Secretary, surrender the same to such other person as the Secretary may designate;

(f) Submit his books and records to examination by the Secretary and furnish such information and reports as may be requested by the Secretary;

(g) Verify all reports and payments of each handler by audit of such handler's records and the records of any other handler or person upon whose disposition of milk such handler claims classification of skim milk and butterfat and by such investigation as the market administrator deems necessary;

(h) Publicly announce, at his discretion, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, after the date upon which he is required to perform such acts, has not made reports pursuant to § 1129.30 to § 1129.32, inclusive, or payments pursuant to § 1129.90 to § 1129.93, inclusive;

(i) Publicly announce, by posting in a conspicuous place in his office and by such other means as he deems appropriate, and notify each handler in writing:

(1) On or before the 6th day of each month, the minimum price for Class I milk computed pursuant to § 1129.50 and the Class I butterfat differential computed pursuant to § 1129.52(a), both for the current month, and the minimum price for Class II milk computed pursuant to § 1129.51 and the Class II butterfat differential computed pursuant to § 1129.52(b), both for the previous month; and

(2) On or before the 12th day after the end of each of the months, the uniform price for each handler computed pursuant to § 1129.72 and the butterfat differential computed pursuant to § 1129.91;

(j) On or before the 12th day after the end of each month, mail to each handler at his last known address, a statement showing for such handler:

(1) The amount and value of producer milk in each class and the totals thereof;

(k) On or before the 12th day after the end of each month, report to each cooperative association, which so requests, the amount and class utilization of milk received by each handler from producers who are members of such cooperative association. For the purpose of this report, the milk so received shall be prorated to each class in the proportion that the total receipts of milk from producers by such handler were used in each class;

(l) Prepare and make available for the benefit of producers, consumers, and handlers such general statistics and such

information concerning the operations hereof as are necessary and essential to the proper functioning of this part; and

(m) Upon request, furnish to a cooperative association for its members the data reported pursuant to § 1129.31 (a), (b) and (c).

REPORTS, RECORDS AND FACILITIES

**§ 1129.30 Reports of receipts and utilization.**

On or before the 7th day after the end of each month, each handler, except a producer-handler, shall report to the market administrator in the detail and on forms prescribed by the market administrator for each of his approved plants as follows:

(a) The quantities of skim milk and butterfat contained in milk received from each producer;

(b) The quantities of skim milk and butterfat contained in products designated as Class I milk pursuant to § 1129.41(a) received from fluid milk plants of other handlers;

(c) The quantities of skim milk and butterfat in other source milk;

(d) The quantities of skim milk and butterfat contained in inventories of products designated as Class I milk pursuant to § 1129.41(a) on hand at the beginning and end of the month;

(e) The utilization of all skim milk and butterfat required to be reported pursuant to this section including a statement of the disposition of Class I milk outside the marketing area; and

(f) Such other information with respect to receipts and utilization as the market administrator may prescribe.

**§ 1129.31 Payroll reports.**

On or before the 20th day of each month each handler, except a producer-handler, shall submit to the market administrator his producer payroll for deliveries of milk for the preceding month for each of his fluid milk plants which shall show for each producer:

(a) His name and address;

(b) The total pounds and the average butterfat test of milk received;

(c) The number of days if less than the entire month for which milk was received;

(d) Net amount of such handler's payment, together with the price(s) paid and the nature and amount of any deductions.

**§ 1129.32 Other reports.**

(a) Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe;

(b) Each handler, who causes milk to be diverted for his account directly from producers' farms to an unapproved plant, shall prior to such diversion, report to the market administrator and to the cooperative association, of which such producer is a member, his intention to divert such milk, the proposed date or dates of such diversion, and the plant to which such milk is to be diverted.

**§ 1129.33 Records and facilities.**

Each handler shall maintain and make available to the market administrator or to his representative during the usual hours of business such accounts and records of his operations and such facilities as are necessary for the market administrator to verify or establish the correct data with respect to:

(a) The receipts and utilization of all receipts of producer milk and other source milk;

(b) The weights and tests for butterfat and other content of all milk, skim milk, cream and other milk products handled;

(c) The pounds of skim milk and butterfat contained in or represented by all milk, skim milk, cream and milk products on hand at the beginning and end of each month; and

(d) Payments to producers and cooperative associations including any deductions authorized by producers and disbursement of money so deducted.

**§ 1129.34 Retention of records.**

All books and records required under this subpart to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the month to which such books and records pertain: *Provided*, That if, within such three-year period, the market administrator notifies the handler in writing that the retention of such books and records is necessary in connection with a proceeding under section 8c(15)(A) of the act or a court action specified in such notice the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case, the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

**§ 1129.40 Skim milk and butterfat to be classified.**

All skim milk and butterfat at fluid milk plants which is required to be reported for the month pursuant to § 1129.30, shall be classified by the market administrator pursuant to the provisions of §§ 1129.41 to 1129.46, inclusive.

**§ 1129.41 Classes of utilization.**

Subject to the conditions set forth in §§ 1129.43 and 1129.44, the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk (including reconstituted skim milk) and butterfat (1) disposed of in fluid form as milk, skim milk, buttermilk, flavored milk drinks, cream, cultured sour cream, any mixture of cream and milk or skim milk (other than frozen storage cream, aerated cream products, eggnog, ice cream mix or other frozen mixes, evaporated or condensed milk and any milk product contained in hermetically sealed containers): *Provided, however,* That when any such product is fortified with nonfat milk solids the amount of skim milk to be classified as Class I shall be only that amount equal to the weight of skim milk in an equal volume of unfortified product of the same nature and butterfat content, and (2) not accounted for as Class II milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Used to produce any product other than those designated as Class I milk pursuant to paragraph (a) of this section;

(2) Disposed of and used for livestock feed;

(3) Contained in inventory of milk and milk products designated as Class I milk pursuant to subparagraph (a)(1) of this section on hand at the end of the month;

(4) In shrinkage not to exceed 2 percent of skim milk and butterfat, respectively, in producer milk and other source milk; and

(5) Skim milk contained in any fortified product designed pursuant to paragraph (a)(1) of this section in excess of the pounds of skim milk in such product classified as Class I pursuant to such subparagraph.

**§ 1129.42 Shrinkage.**

The market administrator shall assign shrinkage at the fluid milk plant(s) of each handler as follows:

(a) Compute the shrinkage of skim milk and butterfat classified as Class II milk; and

(b) Assign the amounts pro rata to the handler's receipts of skim milk and butterfat, respectively, in producer milk and in other source milk.

**§ 1129.43 Responsibility of handlers and reclassification of milk.**

(a) All skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk or butterfat can prove to the market administrator that such skim milk or butterfat should be classified as Class II milk;

(b) Any skim milk or butterfat shall be reclassified if verification by the market administrator discloses that the original classification was incorrect.

**§ 1129.44 Transfers.**

Skim milk or butterfat disposed of each month from a fluid milk plant shall be classified:

(a) In the classification indicated by both handlers in their reports submitted for the month to the market administrator pursuant to § 1129.30 if transferred in the form of products designated as Class I milk in § 1129.41(a)(1) to a fluid milk plant of another handler, except a producer-handler: *Provided,* That the percentage of the total quantities of skim milk and butterfat, respectively, in products thus transferred and assigned to Class I milk shall not be greater than the percentage of skim milk and butterfat in producer milk classified as Class I milk in the plant of the transferee handler: *And provided further,* That if either or both handlers have other source milk during the month, the skim milk or butterfat so transferred shall be classified at both plants so as to allocate the greatest possible Class I utilization to the producer milk of both handlers;

(b) As Class I milk, if transferred to a producer-handler in the form of products designated as Class I milk in § 1129.41(a)(1);

ductions.

(c) As Class I milk, if transferred or diverted in the form of milk, skim milk or cream in bulk to a nonfluid milk plant located more than 400 miles distant by the shortest highway distance as determined by the market administrator;

(d) As Class I milk, if transferred or diverted in the form of milk, skim milk or cream in bulk to a nonfluid milk plant located not more than 400 miles distant by the shortest highway distance as determined by the market administrator, unless the following conditions are met:

(1) The transferring-handler claims Class II utilization in a product specified in § 1129.41(b);

(2) The operator of such nonfluid milk plant keeps adequate books and records showing the utilization of all skim milk and butterfat received at such plant and the market administrator is permitted to examine such books and records for the purpose of verification; and

(3) The Class I milk, as defined pursuant to § 1129.41(a) in such nonfluid milk plant does not exceed the receipts of skim milk and butterfat in milk received during the month from dairy farmers, who the market administrator determines, constitute the regular source of supply for such plant: *Provided,* That any Class I milk in excess of receipts from such dairy farmers shall be assigned to milk, skim milk, or cream so transferred or diverted.

### § 1129.45 Computation of the skim milk and butterfat in each class.

For each month, the market administrator shall correct for mathematical and for other obvious errors the reports of receipts and utilization for the fluid milk plant(s) of each handler and shall compute the pounds of butterfat and skim milk in Class I milk and Class II milk for such handler: *Provided,* That if any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such product, plus all of the water originally associated with such solids.

### § 1129.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1129.45 the market administrator shall determine the classification of producer milk received at the fluid milk plant(s) of each handler each month as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class II milk the pounds of skim milk assigned to producer milk pursuant to § 1129.42(b);

(2) Subtract from the pounds of skim milk in Class I milk the pounds of skim milk received as Class I products in consumer packages from a nonfluid milk plant which are not in excess of the pounds of skim milk transferred or diverted by the handler to such nonfluid milk plant as Class I milk;

(3) Subtract from the remaining pounds of skim milk in series beginning with Class II milk, the pounds of skim milk in other source milk as defined pursuant to § 1129.17;

(4) Subtract from the remaining pounds of skim milk in series beginning with Class II milk, the pounds of skim milk contained in inventory on hand at the beginning of the month and classified pursuant to § 1129.41(b)(3);

(5) Subtract from the remaining pounds of skim milk in each class the received from the fluid milk plants of skim milk contained in products designated as Class I milk in § 1129.41(a)(1) received from the fluid milk plants of other handlers and in milk received from a cooperative association in its capacity as a handler pursuant to § 1129.13(b)(2), according to the classification of such skim milk as determined pursuant to § 1129.44(a);

(6) Add to the remaining pounds of skim milk in Class II milk the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph; and

(7) If the remaining pounds of skim milk in both classes exceed the pounds of skim milk contained in producer milk, subtract such excess from the remaining pounds of skim milk in series beginning with Class II milk. Any amount so subtracted shall be known as "overage."

(b) Butterfat shall be allocated in accordance with the same procedure outlined for skim milk in paragraph (a) of this section;

(c) Determine the weighted average butterfat content of the Class I and Class II milk allocated to producer milk.

## Minimum Prices

### § 1129.50 Class I milk.

Subject to the provisions of §§ 1129.52 and 1129.53 the minimum price per hundredweight to be paid by each handler for producer milk received at his fluid milk plant and classified as Class I milk shall be the price for Class I milk established under Federal Order No. 126 regulating the handling of milk in the North Texas marketing area, plus 38 cents.

### § 1129.51 Class II milk.

Subject to provisions of § 1129.52 the minimum price per hundredweight to be paid by each handler for producer milk received at his fluid plant and classified as Class II milk shall be the price computed pursuant to paragraph (a) of this section, less 14 cents or the price computed pursuant to paragraph (b) of this section, whichever is higher, during April, May, and June; and for each of the other months, the price computed pursuant to paragraph (a) or paragraph (b) of this section, whichever is higher:

(a) The sum of the plus values computed as follows:

(1) Subtract 3 cents from the Chicago butter price, add 20 percent thereof, and multiply by 4.0.

(2) From the simple average, as computed by the market administrator, of the weighted averages of carlot prices per pound for nonfat dry milk, spray and roller process, respectively, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the preceding month through the 25th day of the current month by the Department, deduct 5.5 cents and multiply by 8.16.

(b) The price per hundredweight computed by multiplying by 8.4 the average of the daily prices paid per pound of cheese at Wisconsin Primary markets ("Cheddars" f.o.b. Wisconsin assembling points, cars, or truckloads) as reported by the Department for the months and rounding to the nearest cent.

### § 1129.52 Butterfat differential to handlers.

For milk containing more or less than 4 percent butterfat, the class prices pursuant to §§ 1129.50 and 1129.51 shall be increased or decreased, respectively, for each one-tenth of one percent butterfat by the appropriate rate, rounded in each case to the nearest one-tenth cent, determined as follows:

(a) *Class I milk.* Multiply the Chicago butter price for the preceding month by 0.120.

(b) *Class II milk.* Multiply the Chicago butter price for the current month by 0.110.

### § 1129.53 Location adjustments to handlers.

For that milk which is received from producers at a fluid milk plant located outside of Zone I and classified as Class I milk the price specified in § 1129.50 shall be reduced 1.5 cents for each 10 miles or fraction thereof by the straight line distance as determined by the market administrator that the County Court House of the county in which such plant is located is from the County Court House in New Braunfels, Texas.

### § 1129.54 Use of equivalent prices.

If for any reason a price quotation required by this order for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

## Application of Provisions

### § 1129.60 Producer-handlers.

Sections 1129.40 through 1129.46, 1129.50 through 1129.54, 1129.70 through 1129.72, and 1129.90 through 1129.96 shall not apply to a producer-handler.

### § 1129.61 Plants subject to other Federal orders.

The provisions of this part shall not apply with respect to any plant specified in paragraph (a), (b), or (c) of this section except that the operator thereof shall, with respect to total receipts of skim milk and butterfat at such plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(a) An approved distributing plant which also meets the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk is disposed of during the month on routes in such other Federal order marketing area than is disposed of on routes (other

than to a distributing plant(s)) in the Austin-Waco marketing area.

(b) An approved distributing plant which also meets the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk is disposed of during the month on routes (other than to a distributing plant(s)) in the Austin-Waco marketing area than is disposed of on routes in such other Federal order marketing area, but which plant is, nevertheless, fully regulated under such other Federal order.

(c) An approved supply plant which (1) meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part, or (2) retains automatic pooling status under another Federal order.

DETERMINATION OF UNIFORM PRICE

**§ 1129.70 Net obligation of handlers.**

The net obligation of each handler for producer milk received at his fluid milk plant(s) during each month shall be a sum of money computed by the market administrator as follows:

(a) Multiply the pounds of such milk in each class by the applicable class price and add together the resulting amounts;

(b) Add the amount computed by multiplying the pounds of overage deducted from each class pursuant to § 1129.46 (a)(7) and (b) by the applicable class price;

(c) Add an amount computed as follows:

(1) Determine the pounds if any, that the skim milk or butterfat in inventory, subtracted from Class I milk pursuant to § 1129.46 (a)(4) and (b) is not in excess of the pounds in producer milk classified as Class II milk (other than as shrinkage) for the preceding month; and (2) multiply such pounds by the difference between the Class I price in the current month and the Class II price in the preceding month adjusted by the appropriate butterfat differentials;

(d) Add or subtract, as the case may be, an amount necessary to correct errors discovered by the market administrator in the verification of reports of such handler of his receipts and utilization of skim milk and butterfat for previous months.

**§ 1129.71 Computation of aggregate value used to determine uniform prices.**

For each month the market administrator shall compute an aggregate value for each handler from which to determine the uniform price(s) per hundredweight for producer milk of 4.0 percent butterfat content as follows:

(a) Add to the amount computed pursuant to § 1129.70 the total value of the location differential pursuant to § 1129.90 (b) or (c);

(b) Add or subtract for each one-tenth percent that the average butterfat content of producer milk received by such handler is less or more, respectively, than 4.0 percent, an amount computed by multiplying such difference by the butterfat differential to producers, as determined pursuant to § 1129.91 and multiplying the result by the total hundredweight of producer milk; and

(c) Add the amount represented by any deductions made for eliminating fractions of a cent in computing the uniform price(s) for such handler for the preceding month.

**§ 1129.72 Computation of uniform prices for handlers.**

For each month, the market administrator shall compute a uniform price for producer milk received by each handler as follows:

(a) Divide the aggregate value computed pursuant to § 1129.71 by the total hundredweight of producer milk received by such handler. The result, less any fraction of a cent, shall be known as the uniform price for such handler for milk of 4.0 percent butterfat content, at fluid milk plants in Zone I.

PAYMENTS

**§ 1129.90 Payments to producers.**

Except as provided in paragraph (d) of this section, each handler shall make payment to each producer for milk received from such producer as follows:

(a) On or before the 28th day of each month, for milk received during the first 15 days of the month at not less than the Class II price for the preceding month;

(b) On or before the 15th day after the end of each of the months for milk received during such month, an amount computed at not less than the uniform price per hundredweight pursuant to § 1129.72 subject to the butterfat differential computed pursuant to § 1129.91 and the location differential computed pursuant to § 1129.92; plus or minus adjustments for errors made in previous payments to such producers; and less (1) payment made pursuant to paragraph (a) of this section; (2) marketing service deductions pursuant to § 1129.94 and (3) proper deductions authorized by such producer;

(c) On or before the 13th and 26th days of each month in lieu of the payments pursuant to paragraphs (a) and (b) of this section, respectively, each handler shall pay to a cooperative association for milk which it caused to be delivered to such handler from producers and for which such cooperative association is not a handler pursuant to § 1129.13, if such cooperative association is authorized to collect such payments for its member-producers and has so requested the handler, an amount equal to the sum of the individual payments otherwise payable to such producers.

(d) On or before the 13th and 26th days of each month, each handler shall pay to a cooperative association for milk which was caused to be delivered to such handler by such cooperative association, and for which such cooperative association is a handler pursuant to § 1129.13 (b), an amount not less than the value of such milk computed by multiplying the pounds of such milk allocated to each class pursuant to § 1129.46 by the applicable class prices including the differentials prescribed by the order.

(e) In making the payments to producers pursuant to paragraphs (b) and (c) or (d) of this section, each handler shall furnish each producer or cooperative association from whom he has received milk with a supporting statement which shall show for each month:

(1) The month and the identity of the handler and of the producer;

(2) The daily and total pounds and the average butterfat content of milk received from such producer;

(3) The minimum rate or rates at which payment to such producer is required pursuant to this part;

(4) The rate which is used in making the payment if such rate is other than the applicable rate;

(5) The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producer.

**§ 1129.91 Butterfat differential to producers.**

The applicable uniform prices to be paid pursuant to § 1129.90 to producers delivering milk to each handler shall be increased or decreased for each one-tenth of one percent which the butterfat content of his milk is above or below 4.0 percent, respectively, at the rate determined by multiplying the Chicago butter price for the month by 0.110.

**§ 1129.92 Location differential to producers.**

In making payment to producers pursuant to § 1129.90, the uniform price to be paid for producer milk received at a fluid milk plant located outside of Zone I shall be reduced 1.5 cents for each 10 miles or fraction thereof by the straight line distance as determined by the market administrator that the County Court House of the county in which such plant is located is from the County Court House in New Braunfels, Texas.

**§ 1129.93 Adjustment of accounts.**

Whenever audit by the market administrator of any handler's reports, books, records, or accounts, or verification of weights and butterfat tests of milk or milk products discloses errors resulting in money due a producer or the market administrator from such handler or due such handler from the market administrator, the market administrator shall notify such handler of any amount so due, and payment thereof shall be made on or before the next date for making payments, as set forth in the provisions under which such error occurred.

**§ 1129.94 Marketing services.**

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of his own production) pursuant to § 1129.90, shall deduct 6 cents per hundredweight, or such amount not exceeding 6 cents per hundredweight, as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of each month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk

dler of his receipts and utilization of skim milk and butterfat for previous months.

computed at not less than the applicable price per hundredweight pursuant to

claimed by the

for producers who are not receiving such service from a cooperative association;

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers on or before the 13th day after the end of each month and pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of any such deductions and the amount of milk for which such deduction was computed for each producer.

**§ 1129.95 Expense of administration.**

As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator on or before the 15th day after the end of the month, 5 cents per hundredweight, or such amount not exceeding 5 cents per hundredweight as the Secretary may prescribe, with respect to all (a) receipts of producer milk, including such handlers' own production; (b) other source milk at a fluid milk plant which is classified as Class I milk; and (c) Class I milk disposed of during the month on routes located in the marketing area from a nonfluid milk plant other than a plant defined in § 1129.61.

**§ 1129.96 Termination of obligations.**

The provisions of this section shall apply to any obligation under this part for the payment of money.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the milk involved in such obligation unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the milk with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the calendar month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representatives.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or wilful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler within the applicable period of time, files pursuant to section 8c(15)(A) of the act, a petition claiming such money.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

**§ 1129.100 Effective time.**

The provisions of this part or any amendment to this part shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated pursuant to § 1129.101.

**§ 1129.101 Suspension or termination.**

The Secretary may suspend or terminate this part or any provisions of this part whenever he finds this part or any provision of this part obstructs or does not tend to effectuate the declared policy of the act. This part shall terminate in any event whenever the provisions of the act authorizing it cease to be in effect.

**§ 1129.102 Continuing obligations.**

If, upon the suspension or termination of any or all provisions of this part, there are any obligations thereunder, the final accrual or ascertainment of which requires further acts by any person (including the market administrator), such further acts shall be performed notwithstanding such suspension or termination.

**§ 1129.103 Liquidation.**

Upon the suspension or termination of the provisions of this part, except this section, the market administrator, or such liquidating agent as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable and execute and deliver all assignment or other instruments necessary or appropriate to effectuate any such disposition. If a liquidating agent is so designated, all assets, books and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidating and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

**§ 1129.110 Agents.**

The Secretary may, by designation in writing, name any officer or employee of the United States to act as his Agent or Representative in connection with any of the provisions of this part.

**§ 1129.111 Separability of provisions.**

If any provision of this part or its application to any person or circumstances is held invalid the application of such provision and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

Effective date: February 1, 1962.

Signed at Washington, D.C., on January 30, 1962.

CHARLES S. MURPHY,
*Under Secretary.*

[F.R. Doc. 62-1149; Filed, Feb. 2, 1962; 8:46 a.m.]

[Milk Order 132]

# PART 1132—MILK IN TEXAS PANHANDLE MARKETING AREA

## Order Amending Order


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AUTHORITY: §§ 1132.0 to 1132.111 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

### § 1132.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Texas Panhandle marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in the order as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 5 cents per hundredweight or such amount not to exceed 5 cents per hundredweight as the Secretary may prescribe, with respect to butterfat and skim milk contained in (i) producer milk, (ii) other source milk at a pool plant which is allocated to Class I milk, and (iii) Class I milk disposed of in the marketing area (except to a pool plant) from a nonpool plant not subject to the classification and pricing provisions of another Federal order.

(b) *Additional findings.* (1) It is necessary in the public interest to make this order amending the order effective not later than February 1, 1962. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

(2) The provisions of the said order are known to handlers. The recommended decision of the Assistant Secretary of the United States Department of Agriculture was issued November 29, 1961, and the decision of the Under Secretary containing all amendment provisions of this order, was issued December 27, 1961. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective February 1, 1962, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the FEDERAL REGISTER. (Sec. 4(c), Administrative Procedure Act, 5 U.S.C. 1001–1011.)

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as herein amended; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

*Order relative to handling.* It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Texas Panhandle marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as hereby amended, and the aforesaid order is hereby amended as follows:

1132.61 Handlers operating nonpool plants.
1132.62 Rate of payment on unpriced milk.

visions of the Agricultural Marketing Agreement Act of 1937, as amended (7

necessary in the public interest to make

and the aforesaid order is hereby amended as follows:

DEFINITIONS

**§ 1132.1 Act.**

"Act" means Public Act No. 10, 73d Congress, as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

**§ 1132.2 Secretary.**

"Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the United States authorized to exercise the powers or to perform the duties of the said Secretary of Agriculture.

**§ 1132.3 Department.**

"Department" means the United States Department of Agriculture or any other Federal agency authorized to perform the price reporting functions of the United States Department of Agriculture.

**§ 1132.4 Person.**

"Person" means any individual, partnership, corporation, association, or other business unit.

**§ 1132.5 Cooperative association.**

"Cooperative association" means any cooperative marketing association which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members.

**§ 1132.6 Texas Panhandle marketing area.**

"Texas Panhandle marketing area", hereinafter called the "marketing area", means all of the territory within the counties of Armstrong, Briscoe, Carson, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Moore, Oldham, Ochiltree, Potter, Randall, Roberts, Sherman, Swisher, and Wheeler, all in the State of Texas, and Beckham in the State of Oklahoma.

**§ 1132.7 Producer.**

"Producer" means any person, except a producer-handler, who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority, which milk is (a) received at a pool plant, or (b) diverted from a pool plant to a nonpool plant for the account of either the operator of the pool plant or a cooperative association (1) any day during the months of March through June and (2) on not more than 15 days during any of the months of July through February: *Provided,* That milk diverted pursuant to this section shall be deemed to have been received at the location of the plant from which diverted.

**§ 1132.8 Distributing plant.**

"Distributing plant" means a plant which is approved by an appropriate health authority for the processing or packaging of Grade A milk and from which any fluid milk product is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants) located in the marketing area.

**§ 1132.9 Supply plant.**

"Supply plant" means a plant from which milk, skim milk or cream which is acceptable to the appropriate health authority for distribution in the marketing area under a Grade A label is shipped during the month to a pool plant qualified pursuant to § 1132.10(a).

**§ 1132.10 Pool plant.**

"Pool plant" means:

(a) A distributing plant from which a volume of Class I milk equal to not less than 50 percent of the Grade A milk received at such plant from dairy farmers and from other plants is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants) and not less than 15 percent of such receipts are so disposed of to such outlets in the marketing area: *Provided,* That if a portion of a plant is physically apart from the Grade A portion of such plant, is operated separately and is not approved by any health authorities for the receiving, processing or packaging of any fluid milk product for Grade A disposition, it shall not be considered as part of a pool plant pursuant to this section.

(b) A supply plant from which the volume of fluid milk products shipped during the month to pool plants qualified pursuant to paragraph (a) of this section is equal to not less than 50 percent of the Grade A milk received at such plant from dairy farmers during such month: *Provided,* That if such shipments are not less than 75 percent of the receipts of Grade A milk at such plant during the immediately preceding period of September through November, such plant may, upon written application to the market administrator on or before March 1 of any year, be designated as a pool plant for the months of March through June of such year: *And provided further,* That if a portion of a plant is physically apart from the Grade A portion of such plant, is operated separately and is not approved by any health authority for the receiving, processing or packaging of any fluid milk product for Grade A disposition, it shall not be considered as part of a pool plant pursuant to this section.

**§ 1132.11 Nonpool plant.**

"Nonpool plant" means any milk manufacturing, processing or bottling plant other than a pool plant.

**§ 1132.12 Handler.**

"Handler" means (a) any person in his capacity as the operator of one or more distributing or supply plants, (b) any cooperative association with respect to the milk of producers diverted by the association for its own account from a pool plant to a nonpool plant, or (c) any cooperative association with respect to the milk of its member producers which it causes to be delivered directly from the farm to the pool plant of another handler in a tank truck owned and operated by, or under contract to, such cooperative association, if the cooperative association notifies the market administrator and the handler to whom the milk is delivered in writing that it wishes to become the handler for such milk. The cooperative association shall be considered the handler for such bulk tank milk, effective the first day of the month following receipt of such notice, and milk so delivered shall be deemed to have been received by the cooperative association at a pool plant at the location of the pool plant to which it is delivered.

**§ 1132.13 Producer-handler.**

"Producer-handler" means any person who operates a dairy farm and a distributing plant but who receives no milk from other dairy farmers.

**§ 1132.14 Producer milk.**

"Producer milk" means only that skim milk or butterfat contained in milk (a) received at the pool plant directly from producers, or (b) diverted from a pool plant to a nonpool plant in accordance with the conditions set forth in § 1132.7.

**§ 1132.15 Fluid milk product.**

"Fluid milk product" means milk (including concentrated milk), skim milk (including reconstituted skim milk), buttermilk, milk drinks (plain or flavored), cream, or any fluid mixture of cream and milk or skim milk (except storage cream, aerated cream products, eggnog, ice cream mix, evaporated or condensed milk, and sterilized products packaged in hermetically sealed containers): *Provided,* That when any such product is fortified with nonfat milk solids the amount of skim milk to be included within this definition shall be only that amount equal to the weight of skim milk in an equal volume of an unfortified product of the same nature and butterfat content.

**§ 1132.16 Other source milk.**

"Other source milk" means all skim milk and butterfat contained in:

(a) Receipts during the month in the form of fluid milk products except (1) fluid milk products received from pool plants, or (2) producer milk; and

(b) Products other than fluid milk products from any source (including those produced at the plant) which are reprocessed or converted to another product in the plant during the month.

**§ 1132.17 Chicago butter price.**

"Chicago butter price" means the simple average as computed by the market administrator of the daily wholesale selling prices (using the midpoint of any range as one price) per pound of 92-score bulk creamery butter at Chicago as reported during the month by the Department.

**§ 1132.18 Base milk.**

"Base milk" means milk received at a pool plant from a producer during any of the months of March through June which is not in excess of such producer's daily base computed pursuant to § 1132.95

multiplied by the number of days in such month.

**§ 1132.19 Excess milk.**

"Excess milk" means milk received at a pool plant from a producer during any of the months of March through June which is in excess of base milk received from such producer during such month, and milk received during such month from a producer for whom no base can be computed pursuant to § 1132.95.

MARKET ADMINISTRATOR

**§ 1132.25 Designation.**

The agency for the administration of this part shall be a market administrator, selected by the Secretary, who shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of, the Secretary.

**§ 1132.26 Powers.**

The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

(b) To receive, investigate, and report to the Secretary complaints of violations;

(c) To make rules and regulations to effectuate its terms and provisions; and

(d) To recommend amendments to the Secretary.

**§ 1132.27 Duties.**

The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including but not limited to the following:

(a) Within 45 days following the date on which he enters upon his duties, or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon his duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;

(c) Obtain a bond in a reasonable amount, and with reasonable surety thereon, covering each employee who handles funds entrusted to the market administrator;

(d) Pay out of the funds provided by § 1132.88 (1) the cost of his bond and of the bonds of his employees, (2) his own compensation, and (3) all other expenses, except those incurred under § 1132.87, necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided for in this part, and upon request by the Secretary, surrender the same to such other person as the Secretary may designate;

(f) Publicly announce, at his discretion, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, after the date upon which he is required to perform such acts, has not made reports pursuant to §§ 1132.30 and 1132.31, or payments pursuant to §§ 1132.80, 1132.84, 1132.86, 1132.87, and 1132.88;

(g) Submit his books and records to examination by the Secretary and furnish such information and reports as may be required by the Secretary;

(h) Verify all reports and payments of each handler by audit of such handler's records and of the records of any other handler or person upon whose utilization the classification of skim milk or butterfat for such handler depends, or by such investigation as the market administrator deems necessary;

(i) Prepare and disseminate to the public such statistics and such information as he deems advisable and as do not reveal confidential information;

(j) Publicly announce on or before:

(1) The 5th day of each month, the minimum price for Class I milk, pursuant to § 1132.51(a), and the Class I butterfat differential, pursuant to § 1132.52(a), both for the current month; and the minimum price for Class II milk, pursuant to § 1132.51(b), and the Class II butterfat differential, pursuant to § 1132.52(b), both for the preceding month;

(2) The 10th day after the end of the months of July through February the uniform price pursuant to § 1132.72 and the producer butterfat differential pursuant to § 1132.81;

(3) The 10th day after the end of each of the months of March through June, the uniform prices for base milk and excess milk pursuant to § 1132.73 and the producer butterfat differential pursuant to § 1132.81; and

(k) On or before the 10th day after the end of each month, report to each cooperative association, which so requests, the percentage of the milk caused to be delivered by the cooperative association or by its members to the pool plant(s) of each handler during the month, which was utilized in each class. For the purpose of this report, the milk so delivered shall be allocated to each class for each handler in the same ratio as all producer milk received by such handler during the month.

REPORTS, RECORDS AND FACILITIES

**§ 1132.30 Reports of receipts and utilization.**

On or before the 7th day after the end of each month, each handler, except a producer handler, shall report for such month to the market administrator in the detail and on forms prescribed by the market administrator:

(a) The quantities of skim milk and butterfat contained in receipts of producer milk, and the aggregate quantities of base and excess milk;

(b) The quantities of skim milk and butterfat contained in fluid milk products received from other pool plants;

(c) The quantities of skim milk and butterfat contained in other source milk;

(d) The quantities of skim milk and butterfat contained in producer milk diverted to nonpool plants pursuant to § 1132.7;

(e) Inventories of fluid milk products on hand at the beginning and end of the month; and

(f) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement of the disposition of Class I milk outside the marketing area.

**§ 1132.31 Other reports.**

(a) Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

(b) Each handler, except a producer-handler, shall report to the market administrator in detail and on forms prescribed by the market administrator:

(1) On or before the 20th day after the end of the month for each of his pool plants his producer payroll for such month which shall show for each producer: (i) His name and address, (ii) the total pounds of milk received from such producer, including, for the months of March through June, the total pounds of base and excess milk, (iii) the number of days, if less than the entire month for which milk was received from such producer, (iv) the average butterfat content of such milk, and (v) the net amount of such handler's payment, together with the price paid and the amount and nature of any deductions;

(2) On or before the first day other source milk is received in the form of any fluid milk product at his pool plant(s), his intention to receive such product, and on or before the last day such product is received, his intention to discontinue receipt of such product;

(3) Prior to his diversion of producer milk to a nonpool plant, his intention to divert such milk, the proposed date or dates of such diversion and the plant to which such milk is to be diverted; and

(4) Such other information with respect to his utilization of butterfat and skim milk as the market administrator may prescribe.

**§ 1132.32 Records and facilities.**

Each handler shall maintain and make available to the market administrator or to his representative during the usual hours of business such accounts and records of his operations, together with such facilities as are necessary for the market administrator to verify or establish the correct data with respect to:

(a) The receipt and utilization of all skim milk and butterfat handled in any form during the month;

(b) The weights and butterfat and other content of all milk, skim milk, cream and other milk products handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products on hand at the beginning and end of each month; and

(d) Payments to producers and cooperative associations including the amount and nature of any deductions and the disbursement of money so deducted.

thereon, covering each employee who

suant to § 1132.81;

handler, shall report to the market ad-

deducted.

**§ 1132.33 Retention of records.**

All books and records required under this subpart to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the month to which such books and records pertain: *Provided,* That if, within such three-year period, the market administrator notifies the handler in writing that the retention of such books and records is necessary in connection with a proceeding under section 8c(15)(A) of the act or a court action specified in such notice the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case, the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

**§ 1132.40 Skim milk and butterfat to be classified.**

The skim milk and butterfat which are required to be reported pursuant to § 1132.30 shall be classified each month by the market administrator, pursuant to the provisions of §§ 1132.41 through 1132.46.

**§ 1132.41 Classes of utilization.**

Subject to the conditions set forth in § 1132.44, the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat (1) disposed of in the form of a fluid milk product (except as provided in paragraph (b)(2) of this section) and (2) not accounted for as Class II milk;

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat (1) used to produce any product other than a fluid milk product; (2) disposed of and used for livestock feed; (3) contained in inventory of fluid milk products on hand at the end of the month; (4) reflecting the skim milk equivalent of nonfat milk solids used in the fortification of any fluid milk product and not accounted for as Class I milk pursuant to § 1132.41(a) by virtue of the proviso of § 1132.15; and (5) in shrinkage allocated to receipts of producer milk and other source milk (except milk diverted to a nonpool plant pursuant to § 1132.7) but not in excess of 2 percent of such receipts of skim milk and butterfat, respectively: *Provided,* That with respect to milk for which a cooperative association is the handler pursuant to § 1132.12(c), shrinkage incurred shall be allocated to the cooperative association in an amount not to exceed 0.5 percent of the total receipts of skim milk and butterfat in such milk and the pool plant to which it is delivered for processing shall be allocated shrinkage incurred in an amount not to exceed one and one-half percent of the total pounds of skim milk and butterfat in such milk.

**§ 1132.42 Shrinkage.**

The market administrator shall allocate shrinkage over a handler's receipts as follows:

(a) Compute the total shrinkage of skim milk and butterfat for each handler; and

(b) Prorate the resulting amounts between the receipts of skim milk and butterfat contained in producer milk and in other source milk.

**§ 1132.43 Responsibility of handlers and reclassification of milk.**

(a) All skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk or butterfat can prove to the market administrator that such skim milk or butterfat should be classified otherwise;

(b) Any skim milk or butterfat shall be reclassified if verification by the market administrator discloses that the original classification was incorrect.

**§ 1132.44 Transfers.**

Skim milk or butterfat disposed of each month from a pool plant shall be classified:

(a) As Class I milk, if transferred in the form of a fluid milk product to the pool plant of another handler, except a producer-handler, unless utilization as Class II milk is claimed by both handlers in their reports submitted for the month to the market administrator pursuant to § 1132.30: *Provided,* That the skim milk or butterfat so assigned to Class II milk shall be limited to the amount thereof remaining in Class II milk in the plant of the transferee-handler after the subtraction of other source milk pursuant to § 1132.46 and any additional amounts of such skim milk or butterfat shall be classified as Class I milk: *And provided further,* That if either or both handlers have received other source milk, the skim milk or butterfat so transferred shall be classified at both plants so as to allocate the greatest possible Class I utilization to the producer milk of both handlers;

(b) As Class I milk, if transferred to a producer-handler in the form of fluid milk product;

(c) As Class I milk, if transferred or diverted in the form of a fluid milk product to a nonpool plant located more than 350 miles by the shortest highway distance as determined by the market administrator from the nearest point in the marketing area;

(d) As Class I milk, if transferred or diverted in the form of a fluid milk product in bulk to a nonpool plant located not more than 350 miles by the shortest highway distance as determined by the market administrator from the nearest point in the marketing area unless:

(1) The transferring or diverting handler claims classification in Class II milk in his report submitted to the market administrator pursuant to § 1132.30 for the month within which such transaction occurred;

(2) The operator of such nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for the purpose of verification; and

(3) The skim milk and butterfat in the fluid milk products (except in ungraded cream disposed of for manufacturing uses) disposed of from such nonpool plant do not exceed the receipts of skim milk and butterfat in milk received during the month from dairy farmers who the market administrator determines constitute the regular source of supply for such plant: *Provided,* That any skim milk or butterfat in fluid milk products (except in ungraded cream disposed of for manufacturing uses) disposed of from the nonpool plant which is in excess of receipts from such dairy farmers shall be assigned to the fluid milk products so transferred or diverted and classified as Class I milk: *And provided further,* That if the total skim milk and butterfat in fluid milk products which were transferred by all handlers to such nonpool plant during the month is less than the skim milk and butterfat classified as Class I milk pursuant to the preceding proviso hereof, the assignment to Class I milk shall be prorated over the claimed Class II classification reported by each such handler on transfers to the nonpool plant.

**§ 1132.45 Computation of the skim milk and butterfat in each class.**

For each month, the market administrator shall correct for mathematical and for other obvious errors the reports of receipts and utilization for the pool plant(s) of each handler and shall compute the pounds of butterfat and skim milk in Class I milk and Class II milk for such handler: *Provided,* That if any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such product, plus all of the water reasonably associated with such solids in the form of whole milk.

**§ 1132.46 Allocation of skim milk and butterfat classified.**

After making the computations pursuant to § 1132.45 the market administrator shall determine the classification of producer milk received at the pool plant(s) of each handler each month as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class II milk the pounds of skim milk assigned to producer milk pursuant to § 1132.41(b);

(2) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source milk received in the form of fluid milk products which were not subject to the Class I pricing provisions of an order issued pursuant to the act;

(3) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source milk other than that received in the form of fluid milk products;

(4) Whenever the total receipts of producer milk by all handlers are less

than 110 percent of Class I sales by all handlers, subtract from the remaining pounds of skim milk in Class II milk an amount equal to such remainder, or the product obtained by multiplying the pounds of skim milk in producer milk by 0.05, whichever is less.

(5) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source received in the form of fluid milk products which are subject to the Class I pricing provisions of another order issued pursuant to the act;

(6) Add to the pounds of skim milk remaining in Class II milk the pounds of skim milk subtracted pursuant to subparagraph (4) of this paragraph;

(7) Subtract from the remaining pounds of skim milk in each class the skim milk in fluid milk products received from the pool plants of other handlers according to the classification of such products as determined pursuant to § 1132.44(a);

(8) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk contained in inventory of fluid milk products on hand at the beginning of the month;

(9) Add to the pounds of skim milk remaining in Class II milk the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph and if the remaining pounds of skim milk in both classes exceed the pounds of skim milk contained in producer milk, subtract such excess from the remaining pounds of skim milk in series beginning with Class II. Any amount of excess so subtracted shall be called "overage".

(b) Butterfat shall be allocated in accordance with the same procedure prescribed for skim milk in paragraph (a) of this section.

(c) Determine the weighted average butterfat content of producer milk remaining in each class computed pursuant to paragraphs (a) and (b) of this section.

MINIMUM PRICES

**§ 1132.50 Basic formula price.**

**The basic formula price shall be the highest of the prices computed pursuant to paragraphs (a) and (b) of this section, rounded to the nearest cent.**

(a) The average of the basic or field prices per hundredweight reported to have been paid or to be paid for milk of 3.5 percent butterfat content received from farmers during the month at the following milk plants for which prices have been reported to the market administrator or to the Department, divided by 3.5 and multiplied by 4.0:

*Present Operator and Location*

Borden Co., Mount Pleasant, Mich.
Carnation Co., Sparta, Mich.
Pet Milk Co., Hudson, Mich.
Pet Milk Co., Wayland, Mich.
Pet Milk Co., Coopersville, Mich.
Borden Co., Orfordville, Wis.
Borden Co., New London, Wis.
Carnation Co., Richland Center, Wis.
Carnation Co., Oconomowoc, Wis.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Belleville, Wis.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

(b) The price obtained by adding together the amounts calculated pursuant to subparagraphs (1) and (2) of this paragraph:

(1) Subtract 3 cents from the Chicago butter price and multiply the remainder by 4.8; and

(2) From the simple average as computed by the market administrator of the weighted averages of carlot prices per pound for nonfat dry milk, spray and roller process, respectively, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the preceding month through the 25th day of the current month by the Department, deduct 5.5 cents, and multiply by 8.16.

**§ 1132.51 Class prices.**

Subject to the provisions of §§ 1132.52 and 1132.53, the class prices per hundredweight for the month shall be as follows:

(a) *Class I milk price.* The Class I milk price shall be the basic formula price for the preceding month, plus $2.15 during the months of July through February and plus $1.85 during all other months.

(b) *Class II milk price.* For the months of July through February, the price for Class II milk shall be the price computed pursuant to § 1132.50(b), and for the months of March through June, such price less 13 cents.

**§ 1132.52 Butterfat differentials to handlers.**

For milk containing more or less than 4.0 percent butterfat, the class prices for the month calculated pursuant to § 1132.51 shall be increased or decreased, respectively, for each one-tenth percent butterfat at the appropriate rate, rounded to the nearest one-tenth cent, determined as follows:

(a) *Class I price.* Multiply the Chicago butter price for the preceding month by 0.120.

(b) *Class II prices.* Multiply the Chicago butter price for the current month by 0.110.

**§ 1132.53 Location differentials to handlers.**

For that milk which is received from producers at a pool plant located 100 miles or more from the City Hall, Amarillo, Texas, by the shortest hard-surfaced highway distance, as determined by the market administrator, and which is transferred to a distributing plant which is a pool plant in the form of a fluid milk product and assigned to Class I pursuant to the proviso of this section, or otherwise classified as Class I milk, the price specified in § 1132.51(a) shall be reduced at the rate set forth in the following schedule according to the location of the pool plant where such milk is received from producers:

| Distance from the Amarillo City Hall (miles): | *Rate per hundredweight (cents)* |
|---|---|
| 100 but less than 110 | 15.0 |
| For each additional 10 miles or fraction thereof an additional | 1.5 |

*Provided,* That for the purpose of calculating such location differential, fluid milk products which are transferred between pool plants shall be assigned to any remainder of Class II milk in the transferee-plant after making the calculations prescribed in § 1132.46(a)(5), and the comparable steps in (b) for such plant, such assignment to transferor plants to be made in sequence according to the location differental applicable at each plant, beginning with the plant having the largest differential.

**§ 1132.54 Use of equivalent prices.**

**If for any reason a price quotation required by this order for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.**

**§ 1132.55 Cheddar cheese credit.**

On and after the effective date hereof through February 1962, any milk used to produce Cheddar cheese or transferred in the form of milk from a pool plant to a nonpool plant and there used to produce Cheddar cheese shall be assigned to such use by the market administrator and shall be subject to a credit computed as follows: Multiply the rate by which the per hundredweight Class II price for milk containing 4.0 percent butterfat exceeds the amount (rounded to the nearest tenth of a cent) obtained by multiplying by 9.0 the average of the daily prices paid per pound of cheese at Wisconsin Primary markets ("Cheddars" f.o.b. Wisconsin assembling points, cars or truckloads) as reported by the Department during the month, by the hundredweight of Class II milk not in excess of the combined volume of skim milk and butterfat remaining after the computation specified in § 1132.46(a)(7) and the corresponding step of § 1132.46(b) less any overage deducted pursuant to § 1132.46(a)(9) and the corresponding step of § 1132.46(b), which was either used to produce Cheddar cheese or transferred in the form of milk from a pool plant to a nonpool plant and there used to produce Cheddar cheese: *Provided,* That in the event the plant at which the Cheddar cheese was produced also received milk to be classified and priced under some other Federal order(s) on the basis of its specific use in Cheddar cheese and the volume of milk so used in such plant was less than the combined volume of milk to be so classified and priced under this and such other order(s), then the hundredweight of milk to which this paragraph is applicable shall be a pro rata share of such use determined by computing the percentage that the volume of milk for which Cheddar cheese use is claimed under this order is of the total volume of Federal order milk for which such use is claimed and applying that percentage to the volume of milk so used in such plant.

APPLICATION OF PROVISIONS

**§ 1132.62 Handlers operating nonpool**

(c) Add the amount obtained in mul-

multiplying the result by the total hun-

tion, rounded to the nearest cent.

such price less 13 cents.

quired by this order for computing class plant.

APPLICATION OF PROVISIONS

**§ 1132.60 Producer-handlers.**

Sections 1132.40 through 1132.46, 1132.50 through 1132.53, 1132.70 through 1132.73, 1132.80 through 1132.88, and 1132.95 through 1132.97 shall not apply to a producer-handler.

**§ 1132.61 Plants subject to other Federal orders.**

The provisions of this part shall not apply with respect to the operation of any plant specified in paragraphs (a) or (b) of this section except that the operator thereof shall, with respect to total receipts of skim milk and butterfat at such plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(a) A distributing plant meeting the requirements of § 1132.10(a) which also meets the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk is disposed of during the month on routes in such other Federal order marketing area than was disposed of to retail and wholesale outlets (excluding pool plants) in this marketing area, except that if such plant was subject to all the provisions of this order in the immediately preceding month, it shall continue to be subject to all the provisions of this order until the third consecutive month in which a greater proportion of its Class I disposition is made in such other marketing area unless notwithstanding the provisions of this paragraph it is regulated under such other order.

(b) A distributing plant meeting the requirements of § 1132.10(a) which also meets the pooling requirements of another Federal order on the basis of distribution in such other marketing area and from which, the Secretary determines, a greater quantity of Class I milk is disposed of during the month to retail and wholesale outlets (excluding pool plants) in this marketing area than is disposed of on routes in such other marketing area but which plant is nevertheless fully regulated under such other Federal order.

**§ 1132.62 Handlers operating nonpool plants.**

None of the provisions from §§ 1132.44 through 1132.53, inclusive, or from §§1132.70 through 1132.85, inclusive, shall apply in the case of a handler in his capacity as the operator of a nonpool plant, except that such handler shall, on or before the 13th day after the end of each month, pay to the market administrator for deposit into the producer-settlement fund an amount calculated by multiplying the total hundredweight of butterfat and skim milk disposed of as Class I milk from such plant to retail or wholesale outlets (including sales by vendors and plant stores) in the marketing area during the month, by the rate determined pursuant to § 1132.63.

**§ 1132.63 Rate of payment on unpriced milk.**

The rate of payment per hundredweight to be made by handlers on unpriced other source milk allocated to Class I milk shall be any plus amount calculated as follows:

(a) During the months of March through June, subtract from the Class I price adjusted by the Class I butterfat and location differentials applicable at a pool plant of the same location as the nonpool plant supplying such other source milk, the Class II price adjusted by the Class II butterfat differential; and

(b) During the months of July through February subtract from the Class I price f.o.b. such nonpool plant the uniform price to producers adjusted by the Class I butterfat differential.

DETERMINATION OF UNIFORM PRICES TO PRODUCERS

**§ 1132.70 Computation of value of milk for each handler.**

The value of producer milk received during each month by each handler shall be a sum of money computed by the market administrator as follows:

(a) Multiply the pounds of milk in each class by the applicable class price and add together the resulting amounts;

(b) Add the amounts computed by multiplying the pounds of overage deducted from each class pursuant to § 1132.46(a)(9) and the corresponding step of (b) by the applicable class prices;

(c) Add the amount obtained in multiplying the difference between the Class II price for the preceding month and the Class I price for the current month by the hundredweight of producer milk classified in Class II less shrinkage during the preceding month, or the hundredweight of milk subtracted from Class I pursuant to § 1132.46(a)(8) and the corresponding step of (b), whichever is less; and

(d) Add an amount calculated by multiplying the hundredweight of skim milk and butterfat subtracted from Class I milk pursuant to § 1132.46(a)(2) and (3) and the corresponding step of (b), by the rate of payment on unpriced milk determined pursuant to § 1132.63 at the nearest nonpool plant(s) from which an equivalent amount of other source skim milk or butterfat was received: *Provided*, That if the source of any such fluid milk product received at a pool plant is not clearly established or if such skim milk and butterfat is received or used in a form other than as a fluid milk product such product shall be considered to have been received from a source at the location of the pool plant where it is classified.

(e) Deduct the amount of any credits computed for such handler pursuant to § 1132.55.

**§ 1132.71 Computation of aggregate value used to determine uniform prices.**

For each month the market administrator shall compute an aggregate value from which to determine uniform prices per hundredweight for producer milk, of 4.0 percent butterfat content, f.o.b. plants located within 100 miles of the City Hall of Amarillo, Texas, as follows:

(a) Combine into one total the values computed pursuant to § 1132.70 for all handlers who made the reports prescribed in § 1132.30 for such month, except those in default of payments required pursuant to § 1132.84 for the preceding month;

(b) Add or subtract for each one-tenth percent that the average butterfat content of producer milk represented by the values included under paragraph (a) of this section is less or more, respectively, than 4.0 percent, an amount computed by multiplying such differences by the butterfat differential to producers, and multiplying the result by the total hundredweight of producer milk;

(c) Add an amount equal to the sum of the location differential deductions to be made pursuant to § 1132.82; and

(d) Add an amount equal to one-half of the unobligated cash balance in the producer-settlement fund.

**§ 1132.72 Computation of uniform price.**

For each of the months of July through February, the market administrator shall compute a uniform price for producer milk of 4.0 percent butterfat content f.o.b. pool plants located within 100 miles of the City Hall of Amarillo, Texas, as follows:

(a) Divide the aggregate value computed pursuant to § 1132.71 by the total hundredweight of producer milk included in such computations; and

(b) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (a) of this section. The resulting figure shall be the uniform price for producer milk.

**§ 1132.73 Computation of uniform prices for base milk and excess milk.**

For each of the months of March through June, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk, each of 4.0 percent butterfat content, f.o.b. pool plants located within 100 miles of the City Hall of Amarillo, Texas, as follows:

(a) From the reports submitted by handlers pursuant to § 1132.30, determine the aggregate classification of producer milk included in the computation of value pursuant to § 1132.71 and the total hundredweight of such milk which is base milk and which is excess milk;

(b) Determine the value of such excess milk on a 4 percent butterfat basis by multiplying the total hundredweight of such milk which is not greater than the total Class II milk pursuant to paragraph (a) of this section by the Class II milk price and by adding thereto the value obtained by multiplying the hundredweight of such excess milk which is greater than the quantity of such Class II milk by the Class I milk price;

(c) Divide the value of excess milk obtained in paragraph (b) of this section by the total hundredweight of such milk, and subtract not less than 4 nor more than 5 cents from the price thus com-

puted. The resulting figure shall be the uniform price for excess milk;

(d) Subtract the value of excess milk obtained in paragraph (b) of this section from the aggregate value of all milk obtained in § 1132.71; and

(e) Divide the amount obtained in paragraph (d) of this section by the total hundredweight of base milk obtained in paragraph (a) of this section, and subtract not less than 4 cents nor more than 5 cents from the price thus computed. The resulting figure shall be the uniform price for base milk.

PAYMENTS

**§ 1132.80 Time and method of payment for producer milk.**

Except as provided in paragraph (c) of this section, each handler shall make payment to each producer for milk received from such producer as follows:

(a) On or before the last day of each month, for milk received during the first 15 days of the month, at not less than the Class II price for the preceding month;

(b) On or before the 15th day after the end of each month, for milk received during such month, an amount computed at not less than the uniform prices per hundredweight pursuant to §§ 1132.72 and 1132.73 subject to the butterfat differential computed pursuant to § 1132.81 plus or minus adjustments for errors made in previous payments to such producer; and less (1) payment made pursuant to paragraph (a) of this section, (2) location differential deductions pursuant to § 1132.82, (3) marketing service deductions pursuant to § 1132.87, and (4) proper deductions authorized by such producer: *Provided,* That if such handler has not received full payment for such month pursuant to § 1132.85 he may reduce uniformly per hundredweight for all producers his payments pursuant to this paragraph by an amount not in excess of the per hundredweight reduction in payment from the market administrator. The handler shall make such balance of payment to those producers to whom it is due on or before the date for making payments pursuant to this paragraph next following that on which such balance of payment is received from the market administrator;

(c)(1) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association each handler shall pay to the cooperative association on or before the 13th and 26th days of each month, in lieu of payments pursuant to paragraphs (a) and (b), respectively, of this section an amount equal to the sum of the individual payments otherwise payable to such producers. The foregoing payment shall be made with respect to milk of each producer whom the cooperative association certifies is a member effective on and after the first day of the calendar month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association.

(2) A copy of each such request, promise to reimburse and certified list of members shall be filed simultaneously with the market administrator by the cooperative association and shall be subject to verification at his discretion through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

(3) Each handler who receives milk from a cooperative association which collects payments for its members pursuant to subparagraph (1) of this paragraph shall, on or before the 20th of each month, furnish such association information showing the daily and total pounds milk received from each of the association's member producers for the first fifteen days of such month and, on or before the fifth day after the end of each month, such information for the 16th through the end of such month.

(d) In making the payments to producers pursuant to paragraphs (b) and (c) of this section, each handler shall furnish each producer or cooperative association from whom he has received milk with a supporting statement in such form that it may be retained by the producer, which shall show:

(1) The month and identity of the handler and of the producer;

(2) The daily and total pounds and the average butterfat content of milk received from such producer, including for the months of March through June, the pounds of base milk and excess milk;

(3) The minimum rate or rates at which payment to the producer is required pursuant to the order;

(4) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producer or cooperative association.

**§ 1132.81 Butterfat differentials to producers.**

The applicable uniform prices to be paid each producer pursuant to § 1132.80 shall be increased or decreased for each one-tenth of one percent which the butterfat content of his milk is above or below 4.0 percent, respectively, at the rate determined by multiplying the total pounds of butterfat in the producer milk allocated to Class I and Class II milk during the month pursuant to § 1132.46 by the respective butterfat differential for each class, dividing the sum of such values by the total pounds of such butterfat, and rounding the resultant figure to the nearest one-tenth of a cent.

**§ 1132.82 Location differentials to producers.**

In making payment pursuant to § 1132.80 the uniform price pursuant to § 1132.72 and the uniform price for base milk pursuant to § 1132.73 to be paid for milk which is received from producers at a pool plant located 100 miles or more from the City Hall, Amarillo, Texas, by the shortest hard-surfaced highway distance as determined by the market administrator shall be reduced at the rate set forth in the following schedule according to the location of the pool plant where such milk is received from producers:

| Distance from the Amarillo City Hall (miles): | *Rate per hundredweight (cents)* |
|---|---|
| 100 but less than 110 | 15.0 |
| For each additional 10 miles or fraction thereof an additional | 1.5 |

**§ 1132.83 Producer-settlement fund.**

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1132.62, 1132.84, and 1132.86, and out of which he shall make all payments pursuant to §§ 1132.85 and 1132.86: *Provided,* That payments due to any handler shall be offset by payments due from such handler.

**§ 1132.84 Payments to the producer-settlement fund.**

On or before the 12th day after the end of each month each handler shall pay to the market administrator the amount by which the value of milk for such handler, pursuant to § 1132.70, for such month exceeds the obligation, pursuant to § 1132.80, of such handler to producers for milk received during the month.

**§ 1132.85 Payments out of the producer-settlement fund.**

On or before the 13th day after the end of each month, the market administrator shall pay to each handler, the amount by which the obligation, pursuant to § 1132.80, of such handler to producers for milk received during the month exceeds the value of milk for such handler computed pursuant to § 1132.70. If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section the market administrator shall reduce uniformly per hundredweight such payments and shall complete such payments as soon as the appropriate funds are available.

**§ 1132.86 Adjustment of errors in payment.**

Whenever verification by the market administrator of payments by any handler discloses errors made in payments to the producer-settlement fund pursuant to § 1132.84, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, pursuant to § 1132.85, the market administrator shall, within 15 days,

make such payment to such handler. Whenever verification by the market administrator discloses that payment is due from a handler to the market administrator, pursuant to § 1132.85, the handler shall, within 15 days, make payment to the market administrator of the amount so billed. If a handler fails to make payment pursuant to § 1132.84 or § 1132.85, the market administrator shall, within 15 days, make such payment from the producer-settlement fund. If the market administrator so notifies a handler, the

make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer or cooperative association for milk received by such handler discloses payment of less than is required by § 1132.80, the handler shall pay such balance due such producer or cooperative association not later than the time of making payment to producers or cooperative associations next following such disclosure.

**§ 1132.87 Marketing services.**

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to each producer pursuant to § 1132.80(b), shall deduct 6 cents per hundredweight or such lesser amounts as the Secretary may prescribe, with respect to all milk received by such handler from such producer (except such handler's own farm production), during the month, and shall pay such deductions to the market administrator not later than the 15th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples, and tests of milk received by handlers from such producers during the month and to provide such producers with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) Producers' cooperative associations: In the case of producers for whom a cooperative association is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers and, on or before the 15th day after the end of each month, pay over such deductions to the association rendering such services.

**§ 1132.88 Expense of administration.**

As his pro rata share of the expense of the administration of the order, each handler shall pay to the market administrator, on or before the 15th day after the end of each month, 5 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to butterfat and skim milk contained in (a) producer milk, (b) other source milk at a pool plant which is allocated to Class I milk pursuant to § 1132.46, and (c) Class I milk disposed of in the marketing area (except to a pool plant) from a nonpool plant not subject to the classification and pricing provisions of another order issued pursuant to the act.

**§ 1132.89 Adjustment of overdue accounts.**

There shall be added to any balance due the market administrator pursuant to §§ 1132.62, 1132.84, 1132.86, 1132.87, and 1132.88 an amount equal to one-half of one percent of such balance for each month or any portion thereof that payment of the balance is overdue.

**§ 1132.90 Termination of obligations.**

The provisions of this section shall apply to any obligation under this part for the payment of money.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the milk involved in such obligation unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the milk with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the calendar month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representatives.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or wilful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market adminstrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler within the applicable period of time, files pursuant to section 8c(15)(A) of the act, a petition claiming such money.

DETERMINATION OF BASE

**§ 1132.95 Daily base.**

The daily base for each producer shall be the amount obtained by dividing the total pounds of producer milk received from such producer by all handlers during the months of September through December immediately preceding, by the number of days from the first day of delivery by such producer during such months to the last day of December inclusive, less the number of days for which no deliveries are made, but not less than 112 days.

**§ 1132.96 Base rules.**

The following rules shall apply in connection with the establishment of bases:

(a) A base shall apply to deliveries of milk by the producer for whose account that milk was delivered during the months of September through December;

(b) An entire base shall be transferred from a person holding such base to any other person effective as of the first day of any month following receipt by the market administrator of an application for such transfer. Such application shall be on a form approved by the market administrator and shall be signed by the baseholder and by the person to whom such base is to be transferred: *Provided*, That if a base is held jointly, the entire base shall be transferable only upon receipt of such application signed by all joint holders.

**§ 1132.97 Announcement of established bases.**

On or before February 15 of each year the market administrator shall notify each producer and the handler receiving milk from such producer of the daily base established by such producer.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

**§ 1132.100 Effective time.**

The provisions of this part, or any amendments to this part, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

**§ 1132.101 Suspension or termination.**

The Secretary shall suspend or terminate any or all of the provisions of this part, whenever he finds that it obstructs or does not tend to effectuate the declared policy of the act. This part shall, in any event, terminate whenever the provisions of the act authorizing it cease to be in effect.

**§ 1132.102 Continuing power and duty of the market administrator.**

(a) If, upon the suspension or termination of any or all of the provisions of this part, there are any obligations arising hereunder, the final accrual or ascertainment or which requires further acts by any handler, by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination: *Provided*, That any such acts required to be performed by the market administrator shall if the Secretary so directs, be performed by such other person, persons, or agency as the Secretary may designate.

(b) The market administrator, or such other person as the Secretary may designate shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all funds or property on hand together with the books and records of the market administrator, or such person, to such person as the Secretary shall direct; and (3) if so directed by the Secretary execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the market administrator or such person pursuant thereto.

**§ 1132.103 Liquidation after suspension or termination.**

Upon the suspension or termination of any or all provisions of this part the market administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under this control, together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected pursuant to the provisions of this part, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

**§ 1132.110 Separability of provisions.**

If any provision of this part, or its application to any person or circumstances, is held invalid, the application of such provision, and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

**§ 1132.111 Agents.**

The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this part.

Effective date: February 1, 1962.

Signed at Washington, D.C., January 30, 1962.

CHARLES S. MURPHY,
*Under Secretary.*

[F.R. Doc. 62–1151; Filed, Feb. 2, 1962; 8:46 a.m.]